

JSI CPNI COMPLIANCE MANUAL

John Staurulakis, Inc. (JSI) has developed this manual for use by its client companies. Reproduction or disclosure of the contents of this document to any party other than the client company recipient without first obtaining written authorization from JSI is strictly prohibited.

SEPTEMBER 2007



TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
INTRODUCTION	5
I. Purpose of this Manual.....	5
II. Topics Covered in the Manual.....	5
III. Contact Information.....	7
SECTION 1	
THE DEFINITION OF CPNI AND THE RULES THAT APPLY.....	8
I. Definition of CPNI.....	9
II. Federal Rules Governing the Use of CPNI.....	10
A. Section 222 of Communications Act of 1934, as Amended	10
B. FCC Rules - Part 64, Subpart U	10
III. The Types of Carriers to Whom the Rules Apply	11
A. Telecommunications Carriers	11
B. Interconnected VoIP Providers	11
IV. When and How CPNI Can Be Used.....	12
A. General Rules Concerning Confidentiality of Carrier Information	12
B. Permissible Uses of CPNI.....	12
C. Other Rules Governing the Use of CPNI	13
V. What is Not Considered CPNI.....	15
A. Aggregate Customer Information.....	15
B. Subscriber List Information	15
C. Customer's Name, Address and Phone Number	15
VI. Examples of Appropriate Use of Customer Name, Address and Phone Number for Marketing Purposes	17
A. Example 1.....	17
B. Example 2.....	17
C. Example 3.....	17
D. Example 4.....	17
E. Example 5.....	17
VII. Summary.....	18
SECTION 2	
USING CPNI FOR MARKETING PURPOSES	19
I. What are the Benefits of Using CPNI for Marketing?	20
II. Use of CPNI Without Customer Approval.....	20
A. The Telecommunications Service from Which Such Information is Derived (The Total Service Approach).....	20
B. Services Necessary to, or Used in, the Provision of Such Telecommunications Service	21
III. Use of CPNI With Customer Approval.....	24
A. Ways to Obtain Customer Approval.....	24

B. Either Opt-Out or Opt-In Can Be Used to Market a Communications-Related Service Offered by a Carrier's Division, Affiliate or Agent	25
C. Only Opt-in Approval Can Be Used to Share CPNI with Divisions/Affiliates or Agents that Provide No Communications-Related Services	27
D. New CPNI Rules Require Opt-in Approval for Sharing CPNI with Joint Venture Partners and Independent Contractors	28
E. Opt-in Approval is Required for Sharing CPNI with any Unrelated Third Party	28
 SECTION 3	
NEW CPNI RULES	29
I. Background & Effective Date	30
II. Password Requirements	30
A. Alternatives to Creating Passwords	31
B. Summary of the Password Requirements.....	32
III. Customer Account Change Notification.....	33
IV. Business Customer Exemption	34
V. Notice of Unauthorized Disclosure of CPNI and Record Maintenance.....	35
VI. Joint Venture and Independent Contractor Use of CPNI.....	35
VII. Annual CPNI Certification.....	36
VIII. CPNI Regulations Are Now Applicable to Providers of Interconnected VoIP Service	37
IX. Enforcement.....	37
 SECTION 4	
NOTIFICATION AND SAFEGUARD REQUIREMENTS THAT APPLY TO ALL CARRIERS	39
I. Notification Requirements	40
A. Notification of Account Changes.....	40
B. Notification of CPNI Security Breaches.....	41
II. Safeguards Requirements.....	42
A. Telecom carriers must train their personnel as to when they are and are not authorized to use CPNI.....	42
B. Carriers must have an express disciplinary process	42
C. Carriers must keep a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI	43
D. Annual CPNI Certification – File with FCC on March 1 st	43
E. Safeguards on the Disclosure of CPNI	44

SECTION 5	
NOTICE AND SAFEGUARD REQUIREMENTS FOR CARRIERS THAT USE CPNI FOR MARKETING PURPOSES WHEN CUSTOMER APPROVAL IS REQUIRED	48
I. Notice Requirements if Customer Approval is Required	49
A. Notice Requirements Common to Both Opt-in and Opt-out	49
B. Notice and Timeline Specific to Opt-Out	50
C. Notice Specific to Opt-In	52
D. Notice Specific to Streamlined Consent for One-Time Use of CPNI	52
II. Safeguards Requirements that Apply If Customer Approval is Required	53
A. Carriers Must Implement a System by which the Status of a Customer's CPNI Approval Can be Clearly Established Prior to the Use of CPNI	53
B. Carriers Must Maintain a Record of the Campaigns	55
C. Supervisory Review Process	56
D. Reporting Requirement Specific to Use of the Opt-Out Method	56
III. Sample Opt-Out and Opt-In Notices	57
A. SAMPLE OPT-OUT NOTICE	57
B. SAMPLE OPT-IN NOTICE	59
SECTION 6	
EXAMPLES OF WHEN CPNI IS USED FOR MARKETING PURPOSES	62
SECTION 7	
FREQUENTLY ASKED QUESTIONS	77
I. The Definition of CPNI and the Rules That Apply	85
II. Using CPNI for Marketing Purposes	94
III. New CPNI Rules	103
IV. Notification of Account Changes	108
V. Notice and Safeguard Requirements For Carriers that use CPNI for Marketing Purposes When Customer Approval is Required	115
APPENDIX 1	
SECTION 222 OF THE ACT AND FCC RULES – PART 64, SUBPART U	123
APPENDIX 2	
TABLE OF FCC ORDERS	138
APPENDIX 3	
GLOSSARY OF CPNI TERMS USED IN MANUAL	140

INTRODUCTION

I. Purpose of this Manual

This manual is intended to provide an overview of Federal Communications Commission (“FCC”) rules pertaining to Customer Proprietary Network Information or “CPNI” and serve as a resource for company reference and training on the topic of CPNI, to include but not be limited to the proper use of CPNI, restrictions on the use of CPNI, CPNI notice and safeguard requirements. Because telecommunications carriers are required to file with the FCC on, or before, March 1st annually, a compliance certificate affirming that their company has established necessary procedures and has conducted training to ensure compliance with CPNI rules, it is anticipated that this manual will be a useful tool in facilitating such compliance.

II. Topics Covered in the Manual

What is the importance of CPNI? As explained in this manual, CPNI is information about subscribers obtained by a telecommunications carrier through the provision of telecom services to its subscribers that is extremely personal to subscribers and valuable to carriers. Such information can include the numbers that customers call and from which they receive calls, when and how frequently the customer makes calls as well as the types of service offerings to which the customer subscribes and the extent to which the service is used. It also includes information contained on subscribers’ bills.

For some time, telecom carriers have been required to adhere to CPNI rules. These rules were first established when Section 222 was added to the Communications Act of 1934 (the “Act”), as amended through the passage of the Telecommunications Act of 1996. Beginning in 1998, the FCC established rules pursuant to Section 222, some of which were later amended in response to petitions for reconsideration or court rulings.

In recent years, a practice called “pretexting” has arisen which was the impetus for the petition which led to the FCC’s latest Order concerning CPNI which was released on April 2, 2007. This practice involves individuals pretending to be a particular customer or person authorized to obtain access to the customer’s call detail records. This most recent action by the FCC significantly supplements and modifies existing CPNI rules and is designed to prevent pretexting and further safeguard the confidentiality of CPNI. The FCC’s new CPNI rules will apply to all carriers, both wireline, wireless and to interconnected VoIP providers.

This manual covers the major CPNI rules as set forth by Section 222 of the Act and the FCC, including the FCC's most recent CPNI rulings.

- Section 1 of the manual describes CPNI and summarizes current rules governing its use.
- Section 2 explains how CPNI can be used for marketing purposes.
- Section 3 describes new CPNI rules established in FCC's most recent CPNI decision in which it addressed pretexting.
- Section 4 lists and explains notification and safeguard requirements which are required of all telecom carriers.
- Section 5 lists and explains notice and safeguard requirements which pertain to carriers that use CPNI for marketing purposes when customer approval is required.
- Section 6 provides examples of situations when CPNI is used for marketing purposes.
- Section 7 contains frequently asked questions which also provide a summary of the information contained in Sections 1-5.

In addition, the manual provides the following supporting documentation:

- Appendix 1 contains a copy of Section 222 of the Act and a copy of the FCC's existing rules and new rules.
- Appendix 2 provides a table of major FCC cases related to CPNI.
- Appendix 3 provides a glossary of terms used in this manual.

This manual does not, however, purport to be a comprehensive list of all federal regulations pertaining to CPNI and should not be used as the sole resource to ensure regulatory compliance. Nor should this manual be used as a substitute for a telecommunications carrier's obligation to know and follow FCC rules. Although JSI intends to provide periodic updates, companies should not rely on the provision of updates to ensure that they are in compliance with the most recent federal rulings.

Additionally, companies should be aware that other federal rules exist governing privacy of customer information and that there may be local and state requirements governing CPNI as well as additional privacy requirements. For example, the FCC has rules governing the sharing of customer information such as rules governing Customer Account Record Exchange ("CARE"), "slamming" rules, and rules governing subscriber list information, billing name and address ("BNA") and directory assistance. Please contact us if you would like more information or require assistance regarding these or other privacy requirements.

III. Contact Information

If you have any questions regarding this manual or other matters pertaining to the FCC's CPNI rules, please contact John Kuykendall (jkuykendall@jsitel.com) in our Maryland office at 301-459-7590 or Craig Cook (ccook@jsitel.com) or Darla Parker (dparker@jsitel.com) in our Texas office at 512-338-0473. We are also available to assist your company in meeting the FCC's CPNI safeguard and notice requirements including the preparation and filing of annual CPNI certifications.

SECTION 1

THE DEFINITION OF CPNI AND THE RULES THAT APPLY

I. Definition of CPNI

“Customer Proprietary Network Information” or “CPNI” is:

- Information relating to the quantity, technical configuration, type, destination, and amount of use of a telecom service that is made available to the carrier by the customer solely by virtue of the customer-carrier relationship; and
- Information contained in bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier (not including the customer’s name and address).

In practical terms, CPNI is information about subscribers obtained by a telecommunications carrier through the provision of telecom services to its subscribers that is extremely personal to subscribers and valuable to carriers such as the numbers that the customer calls and from which they receive calls, when and how frequently the customer make calls as well as the types of service offerings to which the customer subscribes and the extent to which the service is used. It also includes information contained on subscribers’ bills.

Examples of CPNI include:

- Data available to an incumbent local exchange carrier (ILEC) in carrier access billing (CABS) records (EMI Category 11 Records) including calling parties, called-parties and call volumes;
- “Carrier Information” such as the identity of a customer’s Preferred Interexchange Carrier (PIC);
- The volume of calls a customer makes;
- The amount a customer has been billed by a long distance carrier;
- The phone numbers called by a customer, the length of phone calls, and services purchased by a customer, such as call waiting; and
- Call detail information on customers’ bills.

Such data is extremely personal to the subscribers and valuable to carriers because it can be translated into subscriber profiles containing information such as:

- information about the identities and whereabouts of subscribers’ friends and relatives;

- which businesses subscribers patronize;
- when subscribers are likely to be home and/or awake; product and service preferences;
- how frequently and cost-effectively subscribers use their telecommunications services; and
- subscribers' social, medical, business, client, sales, organizational, and political telephone contacts.

II. Federal Rules Governing the Use of CPNI

A. Section 222 of Communications Act of 1934, as Amended

In the Telecommunications Act of 1996, Congress enacted a new section of the Communications Act, Section 222, to govern the way that telecommunications carriers handle CPNI. Prior to this time, the only rules pertaining to CPNI were FCC requirements that prohibited AT&T, the Bell Operating companies and GTE from using CPNI obtained from their provision of regulated services to gain a competitive advantage in the unregulated customer premises equipment (CPE) and "enhanced services" markets. (Enhanced services include such services as voice mail, electronic mail and fax store and forward).

A copy of Section 222 can be found in Appendix 1.

B. FCC Rules - Part 64, Subpart U

Pursuant to Section 222 of the Act, the FCC issued a number of decisions regarding CPNI which established rules that govern the use of CPNI and apply to all telecommunications carriers. The first of these decisions was in February 1998. In establishing its rules, the FCC rejected requests to exclude small ILECs from having to comply with the rules.

The FCC's most recent Order in its CPNI proceeding was released in April 2007 and requires carriers to implement additional measures to protect the personal telephone records of consumers. The new CPNI rules will become effective six months after the order's effective date or on receipt of Office of Management and Budget (OMB) approval, whichever is later. The effective date of the Order is June 8, 2007. Because OMB has yet to grant its approval, we know that the new rules will not become effective until after December 8, 2007. Small carriers will receive an additional six months to implement the rules pertaining to online password requirements.

The FCC's CPNI rules can be found in Part 64 of the FCC's Rules, Subpart U. A copy of the FCC's Rules governing CPNI, including the new CPNI rules, (47 CFR §§ 64.2001-2011) can be found in Appendix 1. A table listing the major FCC CPNI decisions can be found in Appendix 2.

III. The Types of Carriers to Whom the Rules Apply

A. Telecommunications Carriers

The FCC defines telecommunications carriers as those that provide "telecommunications service." These include ILECs and competitive local exchange carriers ("CLECs"), long distance companies and Commercial Mobile Radio Service (wireless) companies.

- Telecommunications service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

B. Interconnected VoIP Providers

The FCC has yet to rule whether interconnected VoIP service is a "telecommunications service" or an "information service." However, in its new CPNI rules, the FCC used the broad authority granted to it under Title I of the Communications Act to require interconnected VoIP providers to comply with its CPNI rules. (See Section 3 (VIII) for further discussion). The term "interconnected" refers to "the ability of the user generally to receive calls from and terminate calls to the public switched telephone network."

In making this amendment, the FCC changed the definition of a "telecommunications carrier" that its uses solely for the purposes of its CPNI rules, such that interconnected VoIP providers would be considered a "telecommunications carrier." Thus, please be aware that in the framework of the FCC's CPNI rules and throughout this manual, when the terms, "telecommunications carrier," "telecom carrier" or "carrier" are used, these terms include interconnected VoIP providers as well as traditional telecom carriers pursuant to the new CPNI rules.

IV. When and How CPNI Can Be Used

A. General Rules Concerning Confidentiality of Carrier Information

1. Carriers Have a Duty to Protect the Confidentiality of Information Relating to Other Carriers, Equipment Manufacturers and Customers - Section 222(a) states that every telecom carrier has a duty to protect the confidentiality of, proprietary information of, and relating to, other telecom carriers, equipment manufacturers, and customers, including telecom carriers reselling telecom services provided by a telecom carrier.
2. Carriers Must Not Use Information Received from Other Carriers for Its Own Marketing Efforts - Section 222(b) of the Act requires that any telecom carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecom service must use such information only for such purpose, and shall not use such information for its own marketing efforts.

B. Permissible Uses of CPNI

1. Section 222(c)(1) of the Communications Act and Section 64.2005(a) of the FCC's Rules specify that telecom carriers can only use CPNI in the following instances:
 - As required by law (see below for exceptions that are provided for in Section 222 and FCC rules);
 - with the approval of the customer (see Section 2 (III) for further discussion regarding obtaining customer approval through: "opt-out," "opt-in" or "streamlined consent for one-time use of CPNI");
 - without the approval of the customer in the provision of the telecommunications service from which such information is derived, or services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories (see Section 2 (II) for further discussion of the FCC's "total service approach" and services that are considered "necessary to, or used in, the provision of such telecommunications service")
2. Section 222(d) of the Act and Section 64.2005(d) of the FCC's Rules provide exceptions to this rule for all telecom carriers. These provisions allow a telecom carrier, either directly or through its agents, to use CPNI:

- To initiate, render, bill, and collect for telecom services; or
 - To protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive or unlawful use of, or subscription to, such services
3. Section 222(d) of the Act and Section 64.2005(c)(2) of the FCC's Rules provide exceptions for Commercial Mobile Radio Service ("CMRS" or wireless) providers. Under these provisions, CMRS providers may:
- Provide call location information concerning the user of a wireless service in certain specified emergency situations;
 - Use, disclose or permit access to CPNI for the purpose of conducting research on the health effects of CMRS

C. Other Rules Governing the Use of CPNI

1. Section 64.2005(b) of the FCC's rules prohibits a telecom carrier from using, disclosing or permitting access to CPNI for anticompetitive purposes such as to identify or track customers that call competing service providers.
 - The FCC's rule gives the following example: a local exchange carrier ("LEC") may not use local service CPNI to track customers that call local service competitors.
2. Section 222(c)(2) requires a telecom carrier to disclose CPNI, upon affirmative written request by the customer, to any person designated by the customer.
 - Please note - Notwithstanding the above requirement that an affirmative written request by the customer be received from the customer before a telecom carrier is permitted to disclose CPNI to a third party, a LEC is permitted to disclose a customer's service record to a competing carrier upon oral approval by a customer prior to commencement of service as part of the duties of a LEC under Section 251(c)(3) (duty to provide Unbundled access (UNEs)) and Section 251(c)(4) (duty to provide resale). In this context, the FCC warned that "a carrier's failure to disclose CPNI to a competing carrier that seeks

to initiate service to that customer who wishes to subscribe to a competing carrier's service, may well constitute an unreasonable practice in violation of section 201(b), depending on the circumstances.” (Please be reminded that rural telephone companies are exempt from these and other Section 251(c) requirements until the “rural exemption” has been removed).

3. The FCC permits carriers to use CPNI to regain customers who have switched to another carrier (also known as "win back" campaigns). (The FCC previously had a rule prohibiting use of CPNI for this purpose but subsequently eliminated that rule). However, telecom carriers cannot use information regarding a customer's decision to switch carriers to retain the customer. This applies, among other times, when information about a customer is requested from a carrier by a competing carrier in the context when a competing carrier “wins” the customer.
 - For example, an ILEC cannot use knowledge of a PIC Change Order that would move the customer from the ILEC affiliated long distance carrier to another long distance carrier in an attempt to retain the current ILEC long distance customer. Only after a reasonable interval following execution of the PIC change can the ILEC seek to “win back” the customer that has now moved to another long distance carrier.
 - Another example would be after a number portability request has been received, the “porting out” carrier cannot seek to “win back” the customer until after the port has been completed.
 - Please note that according to the FCC, a “reasonable interval” at a minimum, should be 24 hours after execution of the PIC change in the switch. However, some states have established longer periods of time. The South Carolina and North Carolina LEC winback intervals are, respectively, 10 and 7 days. Thus it is possible that the FCC may ultimately establish a longer interval applicable to ILEC winback of long distance customers.

V. What is Not Considered CPNI

A. Aggregate Customer Information

Section 222 (h)(2) defines “aggregate customer information” as collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed. Unlike individually identifiable CPNI, aggregate customer information involves customer information that is not private or sensitive.

Section 222(c)(3) governs the use of aggregate customer information. This section permits all telecommunications companies, including LECs, to use aggregate customer information for marketing purposes. Please be aware, however, that LECs have an additional requirement which is that they must make the aggregate customer information available to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request.

B. Subscriber List Information

Section 222 specifically states that subscriber list information is not considered CPNI. The statute defines subscriber list information as any information that:

- identifies the names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications and
- that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Section 222(e) created a duty for ILECs to provide subscriber list information on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format. This includes competing directory publishers.

C. Customer's Name, Address and Phone Number

1. Free to Use for Marketing Purposes

In addition to Section 222's statements that subscriber list information is not considered CPNI, the FCC in one of its decisions regarding CPNI “clarified” that customers' names, telephone numbers and addresses are part of a carrier's business record or customer list that identifies the customer and not considered CPNI. The FCC found that if the definition of CPNI included such information, “a carrier would be precluded from using its business records to contact any of its customers to market any new service that falls outside the scope of its existing

service relationship with those customers” – a result, “clearly not intended by section 222.”

The FCC then ruled that under section 222 and the Commission’s rules, a carrier can contact all of its existing and/or former customers for marketing purposes using a list containing the customers’ names, addresses and telephone numbers (“customer list information”), so long as it does not use CPNI to select a subset of customers from that list.

- Please note that in the sense used here, customer list information is broader than the customers’ names, addresses and telephone numbers that comprise subscriber list information since subscriber list information excludes unlisted numbers and non-published numbers. Thus, the requirement for ILECs to provide subscriber list information to any person under non-discriminatory and reasonable rates, terms and conditions upon request does not apply in the context of when the ILEC is using the broader customer list information when marketing services related to the provision of its local exchange service.

2. Privacy Rules Other Than CPNI Rules May Apply

Although customer list information is not governed by CPNI restrictions and carriers are free to use customers’ names, telephone numbers and addresses to market new services, the FCC warned that telecom carriers have obligations regarding the disclosure of this type of information.

In this context, the FCC cited its Billing Name and Address (BNA) rules. BNA is the name and address provided to a local exchange company by each of its customers to which the local exchange company bills for its services. FCC rules require local exchange carriers to provide interstate common carriers non-discriminatory access to the BNA in certain situations. These rules have been interpreted by the FCC to bar telecom providers from using BNA information for marketing long distance service. (This interpretation was subsequently affirmed by the U.S. Court of Appeals for the District of Columbia.)

Other privacy restrictions may also apply which carriers must address when using customer name, address and phone number information for marketing purposes. Because of these restrictions, it would be advisable for carriers to use mailings rather than calling customers to market new services. For example:

- Under the “Do Not Call” requirements, telecom carriers are prohibited from making calls to numbers on the national Do-Not-Call Registry for telemarketing purposes unless the entity has a “preexisting commercial relationship” with the customer. Even if such a relationship exists, the carrier is precluded from making telemarketing calls if the customer with

the preexisting relationship has requested to be placed on the carrier's company-specific "do-not-call" list.

- Wireless subscribers have come to expect privacy when it comes to their wireless phone numbers. It has been recognized by some in Congress that the wireless phone numbers are generally not publicly available and that privacy of wireless customers' phone numbers has been safeguarded especially since customers are charged for incoming calls.

VI. Examples of Appropriate Use of Customer Name, Address and Phone Number for Marketing Purposes

A. Example 1

A LEC can contact all of its customers and former customers using a list containing their names, addresses and phone numbers to market to the customers a new Internet access service that an affiliate has begun to offer.

B. Example 2

A LEC can contact all of its customers and former customers using a list containing their names, addresses and phone numbers to market to the customers a new video offering that an affiliate has begun to offer.

C. Example 3

A LEC can contact all of its customers and former customers using a list containing their names, addresses and phone numbers to market to the customers a new bundled offering of unlimited local and long distance service, Internet access and video services (triple play) that it has begun to offer in conjunction with its affiliated companies.

D. Example 4

A long distance carrier can contact all of its customers and former customers using a list containing their names, addresses and phone numbers to market to the customers a new bundled offering of unlimited local and long distance service that it has begun to offer in conjunction with its affiliated LEC.

E. Example 5

A wireless carrier can contact all of its customers and former customers by mail using a list containing their names, addresses and phone numbers to market to the customers a new bundled offering of wireless, local and long distance

service, Internet access and video services (quadruple play) that it is providing in conjunction with its affiliated companies.

VII. Summary

- CPNI is information about subscribers obtained by a telecommunications carrier through the provision of telecom services to its subscribers that is extremely personal to subscribers and valuable to carriers such as the numbers that they call and from which they receive calls, when and how frequently they make calls as well as the types of service offerings to which the customer subscribes and the extent the service is used. It also includes information contained on subscribers' bills.
- CPNI does not include aggregate customer information, subscriber list information or customer list information.
- Telecom providers should not use CPNI for any purpose beyond that which is specifically allowed by Section 222 or Section 64 – Part U of the FCC rules.

SECTION 2

USING CPNI FOR MARKETING PURPOSES

I. What are the Benefits of Using CPNI for Marketing?

CPNI can be a valuable tool for targeting customers for marketing and retention efforts. For example, by using CPNI, telecommunications carriers can:

- Identify high revenue customers for enhanced marketing and customer service efforts to ensure customer retention in the face of competition;
- Provide informed and effective customer service representative (CSR) response to inbound calls based on understanding of the particular customer's quantity of services, types of service, technical configuration of services, calling volumes and calling patterns;
- Target and refine marketing campaigns based on predictive models which statistically match CPNI data with the probability of purchasing a particular service;
- Customize and bundle service offerings to meet the unique requirements of individual customers (residential and/or business).
- Target customers for calling plans based on their individual calling and usage patterns.

II. Use of CPNI Without Customer Approval

Section 222(c)(1) provides that except as required by law or with the approval of the customer, a telecom carrier that receives or obtains CPNI by virtue of its provision of a telecommunications service shall only use CPNI in its provision of:

- A. the telecommunications service from which such information is derived, or
- B. services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

The FCC has interpreted these two sections of the statute in the following manner:

A. The Telecommunications Service from Which Such Information is Derived (The Total Service Approach)

The FCC has interpreted the phrase "the telecommunications service from which such information is derived" to mean that a telecom carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings **among the categories of telecommunications service offerings to which the customer already subscribes from the same carrier, without customer approval.** The three "categories" of telecommunications service are:

- Local exchange
- Long distance
- Commercial Mobile Radio Service (CMRS or wireless).

This means that if a customer subscribes to more than one category of service offered by the carrier (through different divisions in the company or through affiliates), the carrier is permitted to share CPNI among the carrier's divisions/affiliated entities that provide the service offerings to the customer. The FCC called this interpretation of Section 222(c)(1), the "total service approach."

In adopting the total service approach, the FCC explained that under Section 222(c)(1), customer approval for carriers to use, disclose, and permit access to CPNI can be inferred by the fact that the customer has an existing relationship with the carrier. The FCC explained that when a customer subscribes to a telecommunications service offering, he/she has implicitly approved the carrier's use of CPNI within that existing relationship. When a customer subscribes to a "package" of telecommunications services offered by the carrier's divisions or affiliates, there exists an implied approval to market services within the package of services to which the customer subscribes, and an implied approval that the divisions/affiliates can share CPNI among themselves for marketing purposes.

The FCC also recognized the industry trend toward, and customer expectations for, one stop shopping and bundling of services and that distinctions between affiliated entities when services are bundled are generally transparent to customers. Although the FCC indicated that use of CPNI is not necessary for carriers to offer bundled services, the Commission found that adopting the total service approach was in the public interest because corporate structure should not prevent affiliated companies from sharing CPNI for marketing of bundled offerings.

B. Services Necessary to, or Used in, the Provision of Such Telecommunications Service

In examining the phrase in Section 222(c)(1) "services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories," the FCC found that in addition to the publishing of directories, all telecommunications carriers may use, disclose, or permit access to CPNI without customer approval for the provision of inside wiring installation, maintenance, and repair services and LECs and CMRS providers may use, disclose, or permit access to CPNI without customer approval for the provision of services formerly known as "adjunct-to-basic" services because these services are "services necessary to, or used in, the provision of such telecommunications service."

- The FCC stated that services formerly known as "adjunct-to-basic" services include but are not limited to: speed dialing, computer-provided directory assistance, call monitoring, call tracing, call

blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain Centrex features.

- In its new CPNI rules, the FCC added interconnected VoIP providers to LECs and CMRS providers as entities that can use CPNI to market services formerly known as “adjunct-to-basic” services.

The FCC also determined that the phrase “services necessary to, or used in, the provision of such telecommunications service” includes “certain products and services provisioned by the carrier with the underlying telecommunications service to comprise the customer’s total service.” The Commission then ruled that wireline carriers (LECs and long distance providers) and CMRS providers may use CPNI derived from the provision of a telecom service to market without customer approval customer premises equipment (“CPE”) necessary to, or used in, the provision of that telecommunications service.

Using the same rationale, the Commission ruled that wireless carriers were permitted to use CPNI to market information services, while wireline carriers were permitted to use CPNI to market only certain information services. For these purposes, the FCC defined “information services” as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operations of a telecommunications system or the management of a telecommunications service.” (In its decision, the FCC specifically excluded Internet access services and noted that “there is no convincing new evidence on the record that shows that such services are necessary to, or used in, the making of a call, even in the broadest sense”).

The following summarizes the FCC’s rulings (including the new CPNI rules) regarding “services necessary to, or used in, the provision of such telecommunications service”

1. All Telecommunications Carriers may use, disclose or permit access to CPNI without customer approval in:

- The publishing of directories (47 U.S.C. § 222(c)(1)(B);
- The provision of inside wiring installation, maintenance, and repair services (47 C.F.R. § 64.2005(c)(1);

2. LECs, CMRS and VoIP Providers may use, disclose or permit access to CPNI without customer approval:

- In order to market services formerly known as “adjunct-to-basic services.” (47 C.F.R. § 64.2005(c)(3) – amended by the new rules)
 - These services include but are not limited to: speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain Centrex features.
 - For example, if a customer already subscribes to local exchange service, the local exchange carrier can use CPNI to market vertical features, such as caller ID or call waiting, because they are considered adjunct-to-basic services.

3. Wireline Carriers (LECs and Long Distance Providers) may use, disclose or permit access to CPNI without customer approval:

- To market CPE necessary to, or used in, the provision of the telecommunications service that the carrier is providing (47 C.F.R. § 64.2005(b)(1));
- For the provision of the following information services: call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward and protocol conversion (47 C.F.R. § 64.2005(b)(1)).

4. Wireless Carriers may use, disclose or permit access to CPNI without customer approval:

- To market CPE necessary to, or used in, the provision of the telecommunications service that the carrier is providing (47 C.F.R. § 64.2005(b)(1));
- For the provision of information services (47 C.F.R. § 64.2005(b)(1) (which includes call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward and protocol conversion but does not include Internet access services).

III. Use of CPNI With Customer Approval

(Notice and safeguard requirements that pertain to carriers that use CPNI for marketing purposes when customer approval is required can be found in Section 5. Examples of when customer approval is required and the type of customer approval required can be found in Section 6).

If a customer does not subscribe to all of the telecom offerings that a telecom carrier and its divisions/affiliates provide, the carrier is not permitted to share CPNI with its divisions/affiliates that provide the service offerings to which the customer does not subscribe unless approval from the customer is obtained.

For example, if a telecom carrier offers local exchange service and it has a division that offers long distance service and the customer subscribes only to the local exchange service, the carrier cannot share the CPNI derived from its provision of local exchange service with the division providing long distance service unless it obtains customer approval.

Likewise, if a telecom carrier offers local exchange service and it has an affiliate that provides long distance service and an affiliate that provides wireless service and the customer subscribes only to the local exchange service, the carrier cannot share the CPNI derived from the provision of its local exchange service with the affiliates unless it obtains customer approval.

A. Ways to Obtain Customer Approval

1. Opt-out Approval

Under this method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object within the specified waiting period after the customer is provided appropriate notification of the carrier's request for consent consistent with the FCC's rules. A sample opt-out notice can be found in Section 5(III)(A).

2. Opt-in Approval

Under this method, the carrier must obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request consistent with the FCC's requirements. A sample opt-in notice can be found in Section 5(III)(B).

3. Streamlined Consent for One-Time Use of CPNI

Under this approach, a telecom carrier may orally obtain limited, one-time use approval of CPNI from a customer during an inbound or outbound call which lasts

for the duration of the call. The FCC cautions carriers to take a conservative approach in deciding which information is necessary for consumers to make informed decisions regarding their CPNI usage.

B. Either Opt-Out or Opt-In Can Be Used to Market a Communications-Related Service Offered by a Carrier's Division, Affiliate or Agent

In its initial CPNI decisions, the FCC had ruled that only opt-in approval could be used to obtain customer approval. However, the FCC modified this requirement in response to a decision by the U.S. Court of Appeals for the Tenth Circuit and allowed carriers to obtain customer approval either through opt out or opt in for all use of CPNI by the carriers themselves or for disclosure to their divisions/affiliates or agents when those divisions/affiliates or agents provide communications related services.

What are Communications-Related Services?

(1) Telecommunications Services

If a division/affiliate or agent provides another telecommunications service (local exchange, long distance or wireless), and the customer does not already subscribe to that service, customer approval must be obtained before CPNI can be used to market the service to the customer. Because the service is “communications-related,” either the opt-in or opt-out method can be used.

(2) Information services typically provided by telecommunications carriers

The FCC gave two examples of what it considered to be information services typically provided by telecommunications carriers – Internet access (DSL) and voice mail. Since both of these services are “communications-related,” either the opt-in or opt-out method can be used.

As noted under Section II(B) above, the FCC specifically excluded Internet access services as being services that are “necessary to, or used in, the provision of such telecommunications service.” Accordingly, customer approval through either the opt-out or opt-in method is required to use CPNI derived from the provision of a telecom service to market DSL services to customers whether or not the DSL service is provided by the telecom carrier or by a division/affiliate or an agent of the carrier.

Concerning the example of voice mail, as noted in Section II(B) above, if the voice mail or other information service offering is being provided by the LEC or CMRS provider, it may be considered as “necessary to, or used in, the provision of” the telecommunications service. In that case, customer approval would not be required to use the telecom carriers’ CPNI to market the voice mail or other

information service offering. However, if a division/affiliate or agent of the carrier were providing the voice mail or other information service offering and not the telecom carrier itself, customer approval to use CPNI derived from the telecom service would be required to market the service. This approval could be obtained through either the opt-out or opt-in method.

(3) Services related to the provision or maintenance of Customer Premises Equipment (CPE)

As noted in Section II(B) above, CPE may be provided by the LEC or CMRS provider itself and be “necessary to, or used in, the provision of the telecommunications service.” Accordingly, customer approval is not required in order to use CPNI derived from the provision of the telecom service to market the CPE used to provide the service. However, if a division/affiliate or agent of the carrier provides a service related to the provision or maintenance of the CPE, customer approval would be required. Because the FCC considers this service to be communications-related, the carrier can use either the opt-out or opt-in method.

(4) Interconnected VoIP Services

As noted in Section 1(III)(B), in its new rules, the FCC extended the existing CPNI rules to interconnected VoIP providers and, solely in the context of its CPNI rules, amended its definition of “telecommunications carrier” to include entities that provide interconnected VoIP service. In making this amendment, the FCC did not amend the definition of “telecommunications service.” Because the total service approach applies to the three categories of telecommunications services, and interconnected VoIP service is not among these categories, it appears that the total service approach does not apply to interconnected VoIP service providers.

However, it does appear that interconnected VoIP service would be considered a communications-related service. In adopting its new rules, the FCC justified its extension of its CPNI rules to VoIP providers because the service is very similar to the communications services provided by traditional analog voice providers. The FCC noted that the “continuing trend toward customer use of [VoIP services] as a replacement for analog services in large measure justifies the extension of our rules to these services to protect consumer privacy.”

Accordingly, under this interpretation, CPNI derived by a telecom carrier from its provision of a telecom service, such as local exchange service, could be used to market the VoIP offering of the carrier’s division/affiliate or of the carrier’s agent after approval has been obtained by the carrier through either the opt-out or opt-in method.

C. Only Opt-in Approval Can Be Used to Share CPNI with Divisions/Affiliates or Agents that Provide No Communications-Related Services

If telecom carrier's division/affiliate or agent provides no communications-related services, the telecom carrier may use CPNI derived from its provision of telecom service(s) to market that service only if it has obtained approval from the customer in the form of **opt-in** approval. In making this ruling, the FCC found that "CPNI dissemination to [divisions/affiliates or agents that provide no communications-related services] is far more similar to third party dissemination than to the sharing of CPNI with affiliates that provide communications-related services, and thus warrants a similar level of protection as that required for third party disclosure."

Accordingly, if a division/affiliate or agent of a telecom company provides a service that does not fall under the four categories of communications-related services listed above, opt-in notice is required before using CPNI derived from the provision of the telecom service to market the non-communications-related service of the division/affiliate or agent.

For example,

- (1) If an ILEC has an affiliated Internet Service Provider (ISP) that operates a website and provides no communications-related services, opt-in approval must be obtained before the ILEC can use its CPNI to market the services of the ISP.
 - Please note that because the ISP is not a telecommunications carrier, it is not subject to the FCC's CPNI rules; however, other privacy rules may apply.
 - Also note that if the ISP provides DSL or interconnected VoIP, each of these services would be considered to be a communications-related service and thus the opt-out approach could be used to market either of those services. (If the ISP operates a VoIP service, under the FCC's new CPNI rules, its VoIP service would be subject to the FCC's CPNI rules).
- (2) If an ILEC has an affiliated video service provider, opt-in approval must be obtained before the ILEC can use its CPNI to market the services of the video provider or can share its CPNI with the video provider.
 - Please note that Section 631 of the Act (rather than Section 222) sets forth privacy rules for video/cable providers. Section 631:

- Places certain restrictions on video/cable providers from collecting or disclosing “personally identifiable information” which includes information such as subscriber, name and telephone numbers.
- Requires video operators to provide notice regarding use of personally identifiable information to subscribers at the time of subscription and at least one year thereafter.
- Contains a prohibition against the collection or disclosure of personally identifiable information for marketing purposes unless the video operator obtains prior written or electronic consent from the subscriber. There are no FCC rules prescribing the format or method for obtaining subscribers’ consent for use of personally identifiable information. One court has ruled that the opt-out method is acceptable but other courts may rule differently.

D. New CPNI Rules Require Opt-in Approval for Sharing CPNI with Joint Venture Partners and Independent Contractors

Under new rules adopted by the FCC, **opt-in** approval is required in order for a telecom provider to use CPNI derived from the provision of its telecom service to market the services provided by the carrier’s joint venture partner and/or independent contractor or to share CPNI with the joint venture partner/independent contractor. (Previously the rules allowed for either opt-in or opt-out approval if the joint venture partner or independent contractor provided a communications-related service). Please note that if your company uses an independent contractor for billing purposes, the FCC’s requirement to obtain approval from customers before sharing CPNI with that independent contractor do not apply because such sharing of information is allowed for under Section 222(d) of the Act, which in part allows carriers to “initiate, render, bill and collect for telecommunications services.”

E. Opt-in Approval is Required for Sharing CPNI with any Unrelated Third Party

The FCC has recognized that disclosures of CPNI to unaffiliated third parties “can have significant privacy consequences and be irreversible.” According to the FCC, the opt-in method protects customers’ CPNI from unapproved disclosure to third parties because it requires carriers to provide prior notice to customers and refrain from disclosing or allowing access to CPNI unless a customer gives his/her express consent by written, oral, or electronic means.

SECTION 3

NEW CPNI RULES (Effective Date to Be Announced)

I. Background & Effective Date

The FCC's most recent Order in its CPNI proceeding requires carriers to implement additional measures to protect the personal telephone records of consumers. These new measures are designed to prevent unauthorized access to CPNI, particularly by data brokers or "pretexters." It is important to recognize that other than the changes outlined in the recent Order, the existing CPNI regulations remain intact. The FCC anticipates that the existing carrier-customer relationship and interaction (in most cases) will not change and that existing CPNI rules will be maintained.

The new rules are in response to recent cases involving unauthorized acquisition of call detail and private communications records, or "pretexting." The Electronic Privacy Information Center (EPIC) petitioned the FCC in August 2005, urging the Commission to investigate telecom carriers' current security practices and to establish more stringent security standards to govern the disclosure of CPNI. Key aspects of the Order released on April 2, 2007, are detailed below.

The new CPNI rules will become effective six months after the order's effective date or on receipt of Office of Management and Budget (OMB) approval, whichever is later. The effective date of the Order is June 8, 2007. Because OMB has yet to grant its approval, we know that the new rules will not become effective until after December 8, 2007. Small carriers will receive an additional six months to implement the rules pertaining to online password requirements.

Please be aware that as part of its Order, the FCC also initiated a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on whether its rules should be broadened to require password protection for non-call-detail CPNI; the benefits of employing physical safeguards and if so, what types, as well as data retention limitations; and what, if any, measures should be taken to secure the privacy of customer information stored in mobile communications devices. The reply comment cycle formally closed on August 7, 2007.

II. Password Requirements

One of the most important aspects of the FCC's actions is the new requirement that, in certain circumstances, carriers obtain and verify a password during customer-initiated calls before releasing any customer phone call records. Without the password, the carrier may only send the requested information to the address of record or by calling the customer at the telephone of record. Password protection also is required for online account access. Customers who visit carriers' retail locations and present a valid photo ID may be given all CPNI, including customer phone call records without having a password. It is very important to keep in mind that password requirements are only applicable to a customer's request for call detail records. Carriers may continue to disclose non-

call detail CPNI to a customer upon verification of the customer identity as current rules require.

Carriers may request that new customers establish a password at the time of service commencement. For existing customers, each carrier may establish its own processes to confirm the customer's identity in order to create a password, but may not obtain customer biographical or account information to authenticate the identity. For accounts that are currently password protected, carriers must create back-up customer authentication methods for lost or forgotten passwords that are also not based on readily available biographical or account information. Similarly, carriers must protect online access to CPNI and cannot rely on readily available biographical or account information to validate a customer's identity. Carriers are not required to reinitialize existing passwords for online accounts.

It is JSI's opinion that most clients can establish a password program to accommodate those customers who request call detail records and that companies need not establish a password for every customer, unless there are other circumstances that dictate such action. As passwords are not required to obtain non-call detail CPNI, carriers can continue to assist customers with service and billing questions if the customer can provide call detail information to support their on-phone request for assistance (i.e. - the telephone number called, time of call, charges, etc.). However, carriers are only allowed to release call detail information concerning the specific data for which the customer inquires and can provide adequate detail. Please contact JSI if you would like assistance in establishing a program.

A. Alternatives to Creating Passwords

When the FCC established the new rules, it provided alternatives to the use of passwords to minimize the impact to existing carrier-customer relations. As such, JSI recommended that passwords be used only as a last resort. This can be done by taking the following steps:

- Because passwords are not required to obtain non-call-detail CPNI, when a customer calls with a billing question and is able to provide the call detail information, such as the telephone number called and time of call, to support the request, the company's customer service representative (CSR) can assist the customer with his/her question.
- If a customer calls with a billing question and is not able to provide call detail information, the CSR can provide the customer with three alternatives before considering the creation of a password:
 - The simplest alternative is for the CSR to call the customer back using the contact telephone number that the company has in its records. The FCC found that "there is not the same need for authentication when

the carrier initiates contact with a customer *via* the telephone number of record.”

- A second alternative is for the CSR to send a copy of the bill to the address that the company has in its records. When the customer receives the copy of the bill, he/she would call the CSR and could then discuss the billing question as described under #1 above.
- The CSR can also provide the customer with a third alternative, visiting the company’s retail location. The FCC’s new rules continue to allow a customer to discuss billing questions and other matters related to the customer’s CPNI when he/she visits a telephone company’s retail location and presents a valid photo ID matching the name on the account.
- As an alternative to the above, companies can establish a password for the customer to access billing information when he/she calls in with a billing question. Establishing a password for new customers can be done at the time of service commencement; for existing customers, carriers may establish their own processes to confirm a customer’s identity to create a password, but may not obtain customer biographical or account information to authenticate the identity.

JSI reminds clients already using passwords for customer billing questions or requests for call detail information that you must create back-up customer authentication methods for lost or forgotten passwords that also are not based on readily available biographical or account information. In addition, if your company allows online access to customer accounts, password protection is required, although the FCC has not required companies to reinitialize existing passwords for online accounts. The requirement that companies may not issue passwords to obtain customer biographical or account information to authenticate the identity of the customer apply in these situations as well.

B. Summary of the Password Requirements

The following rules apply if carriers decide to use the alternative of obtaining and verifying a password during customer-initiated calls before releasing any customer phone call records:

- Restrictions apply regarding the use of biographical and account information:
- Carriers cannot rely on readily available biographical information, or account information to validate a customer’s identity to enable access to CPNI online

- Biographical and account information can also not be used to confirm the identity of the customer for purposes of establishing a password
- Establishing a password for new customers can be done at the time of service commencement
- For existing customers, carriers may establish their own processes to confirm a customer's identity to create a password, but may not obtain customer biographical or account information to authenticate the identity
- Companies already using passwords for customer billing questions or requests for call detail information must create back-up customer authentication methods for lost or forgotten passwords that also are not based on readily available biographical or account information
- If your company allows online access to customer accounts, password protection is required, although the FCC has not required companies to reinitialize existing passwords for online accounts.
- Companies may not need to establish a password for every customer. (Please see recommendations above)
- Companies can continue to assist customers with service and billing questions if the customer can provide call detail information to support their on-phone request for assistance.

III. Customer Account Change Notification

When a change is made to a customer account, including a change or creation of passwords, response to the back-up authentication question (in a case where the customer lost or forgot his password), online account, or address of record, the carrier is required to notify the customer of such change. Although such notification can be provided to the customer by mail (to the address of record), by voicemail or text message, the notification must not disclose what account information has changed. The carrier should also ensure that such notification not be sent to the destination of the new account information. It is imperative that clients establish the necessary business processes to generate the required customer notices.

Summary:

- When a change is made to a customer account, the carrier is required to notify the customer of such change. Such changes can include:
 - change or creation of passwords

- response to the back-up authentication question
- online account
- address of record
- Notification can be provided to the customer by mail (to the address of record), by voicemail or text message.
- The notification must not disclose what account information has changed.
- Notification is not to be sent to the destination of the new account information.

IV. Business Customer Exemption

Although carriers are still subject to the existing CPNI rules for all customer classes, the FCC believes that many business customers are already protected from fraudulent activities through their negotiated service agreements. As such, the FCC is not requiring carriers to apply the same authentication rules (i.e. – passwords, notification of account changes) to business customers. However, this exemption only applies in cases where the carrier has a contract with a business customer that covers the carrier's protection of CPNI and the contract is managed by a dedicated account representative as the primary contact. Unless your company maintains such contracts and has assigned an account representative to serve as the primary contact for the business customer, JSI recommends that you evenly apply the new CPNI rules to all classes of customers, both business and residential customers alike. Alternatively, JSI can assist companies in developing business contracts that contain CPNI protective language.

Summary:

- Existing CPNI rules still apply for all customer classes.
- For business customers that have a contract with a carrier that covers the carrier's protection of CPNI and the contract is managed by a dedicated account representative, the new rules do not apply.
- If carriers do not have such contracts or contracts are not managed by a dedicated account representative, existing and new CPNI rules must be evenly applied to all customer classes.
- JSI can assist companies in developing business contracts that contain CPNI protective language.

V. Notice of Unauthorized Disclosure of CPNI and Record Maintenance

In cases where a customer's CPNI is breached, the carrier must notify both the customer and law enforcement. Of particular interest and importance is that the carrier must first notify law enforcement before notifying the customer of the disclosure. Carriers must notify law enforcement no later than seven business days after a determination of a breach by sending notification electronically to the U.S. Secret Service and the Federal Bureau of Investigation (FBI). The FCC will establish a link at <http://www.fcc.gov/eb/cpni> that will communicate to both agencies. In most cases, carriers must wait seven days after notifying law enforcement before contacting the customer.

Carriers must maintain records of any breach for two years, outlining the date of the breach, the description and circumstances of the information disclosed and the date and communication to law enforcement.

Summary:

- When a customer's CPNI is breached, the carrier must notify both the customer and law enforcement.
- Carriers must first notify law enforcement no later than 7 business days after a determination of a breach.
- Notification must be sent electronically to the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI).
- The FCC will establish a link that will serve as a central reporting facility: (<http://www.fcc.gov/eb/cpni>)
- The carrier may only notify the customer of the CPNI breach publicly after 7 business days following notification to the USSS and the FBI.

VI. Joint Venture and Independent Contractor Use of CPNI

The FCC modified its existing rules concerning treatment of CPNI released to joint venture and independent contractors. Previous rules allowed companies to use either opt-out or opt-in approval for the purpose of using CPNI to market communications-related services by its agents, affiliates and joint venture partners and independent contractors. The change applies only to the method of obtaining approval to share CPNI with joint venture partners and independent contractors. The FCC will now require carriers to obtain explicit approval or "opt-in" consent from customers before sharing their CPNI with joint venture partners or independent contractors.

JSI believes that most carriers are not currently sharing customer CPNI with joint venture partners or independent providers, and thus may not be immediately impacted by these new requirements. We emphasize that existing CPNI rules continue to allow for the use of opt-in or opt-out approval to market communications-related services to the customer or to disclose the customer's CPNI to its agents and affiliates. JSI reminds clients that customer names, addresses, and phone numbers are not CPNI, and carriers can use customer lists without the need for opt-in or opt-out approval for marketing purposes. Likewise, the FCC made clear that the Opt-In regime does not affect a carrier's ability to share CPNI with an independent contractor that performs billing services which is permitted under Section 222(d) of the Act, which in part allows carriers to "initiate, render, bill and collect for telecommunications services."

As noted in Section 1, however, carriers should address customer privacy expectations in their plans to use such information for marketing purposes.

Summary:

- The FCC believes that unauthorized disclosure of CPNI is a growing problem that is exacerbated by the sharing of customer information to joint venture partners and independent contractors.
- The new rules are anticipated to alleviate this issue.
- Previous rules allowed either opt-out or opt-in approval to use CPNI to market communications-related services to a company's agents, affiliates and joint venture partners and independent contractors.
- Under the new rules, carriers must now obtain explicit approval or "opt-in" consent from customers before sharing their CPNI with joint venture partners or independent contractors.
- CPNI rules continue to allow for the use of opt-in or opt-out approval to market communications-related services to the customer or to disclose the customer's CPNI to its agents and affiliates.
- Customer names, addresses, and phone numbers are not CPNI, and carriers can use customer lists without the need for opt-in or opt-out approval.

VII. Annual CPNI Certification

The new rules require carriers to file their compliance certificates avowing that the company has established necessary procedures to ensure compliance with CPNI rules with the FCC on, or before, March 1st annually. Additionally, carriers

are required to include any actions (i.e. state petitions, legal action, etc.) taken against data brokers, as well as a summary of customer complaints related to unauthorized release of CPNI received in the prior year.

Summary:

- Carriers are now required to file their compliance certificates affirming that their company has established necessary procedures to ensure compliance with CPNI rules with the FCC on, or before, March 1st annually.
- Carriers must also report any actions (i.e. state petitions, legal action, etc.) taken against data brokers, as well as a summary of customer complaints related to unauthorized release of CPNI received in the prior year.

VIII. CPNI Regulations Are Now Applicable to Providers of Interconnected VoIP Service

Although the FCC has yet to classify interconnected voice over Internet Protocol (VoIP) services as a telecommunications or information service, the FCC now is applying all CPNI rules to interconnected VoIP providers. JSI is aware of few client companies who are providing an interconnected VoIP service at this time. If your company is offering interconnected VoIP service, please be aware that all CPNI rules apply to this service.

Summary:

- The FCC used its authority under Title I to apply all CPNI rules to interconnected VoIP providers.
- FCC also surmised that applying existing consumer protection rules (Section 222) to interconnected VoIP service would further the protection of not only interconnected VoIP service customers but wireline and wireless customers as well, to the extent those customers place calls to or receive calls from interconnected VoIP customers.

IX. Enforcement

Recently, the FCC imposed fines of \$100,000 against several carriers for not providing the required annual certificate that the company's operating procedures comply with the current rules. Additionally, the FCC has placed carriers "on notice" that it will assume that unauthorized information obtained by a pretexter was a result of the carrier not adequately protecting the customer's CPNI. If the

FCC concludes that the carrier in fact did not protect the customers CPNI, the FCC will sanction the carrier. It is reasonable to expect that the FCC will not hesitate to impose fines similar to those recently issued for non-compliance with these new rules.

SECTION 4

NOTIFICATION AND SAFEGUARD REQUIREMENTS THAT APPLY TO ALL CARRIERS (Includes New Rules)

I. Notification Requirements

(New Notification Rules - see Section 3(III) for further discussion regarding notification of account changes and Section 3(V) for notification of CPNI security breaches).

A. Notification of Account Changes

1. When Notification is Required

As described in section 3(III), under the FCC's new CPNI rules, when a change is made to a customer account, the carrier is required to notify the customer of such change. These changes include:

- a change to the customer's password
- a change to the customer response to the back-up authentication question for lost or forgotten passwords
- a change to an online account
- the creation or change to an address of record

The notification is not required when the customer initiates service, including the selection of a password at service initiation.

2. How Notification Can Be Made

The notification can be provided to the customer by mail (to the address of record), by voicemail or text message to the telephone number of record.

- "Address of record," whether postal or electronic, is an address that the carrier has associated with the customer's account for at least 30 days.
- "Telephone number of record" is the telephone number associated with the underlying service, not the telephone number supplied as a customer's "contact information."

3. Restrictions

The notification must not disclose what account information has changed and is not to be sent to the destination of the new account information.

B. Notification of CPNI Security Breaches

1. A carrier shall notify law enforcement of a breach of its customers' CPNI as described below. The carrier shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of notifying law enforcement as specified under number 2.
 - As used in this section, a "breach" has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.
2. As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the carrier shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.
 - (a) Notwithstanding any state law to the contrary, the carrier shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in the following sections (b) and (c).
 - (b) If the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (a), in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The carrier shall cooperate with the relevant investigating agency's request to minimize any adverse effects of such customer notification.
 - (c) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier

when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by carriers.

3. Customer Notification. After a carrier has completed the process of notifying law enforcement pursuant to number 2 above, it shall notify its customers of a breach of those customers' CPNI.
4. Recordkeeping. All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to number 2 above, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. Carriers shall retain the record for a minimum of 2 years.

II. Safeguards Requirements

A. Telecom carriers must train their personnel as to when they are and are not authorized to use CPNI

- JSI offers webinars, this manual and on-site training to assist client companies' compliance with this requirement.

B. Carriers must have an express disciplinary process

- In company employee handbooks, code of ethics guidelines or other documents which govern employee conduct, employees should be informed that failure to comply with federal CPNI rules and company policies concerning the access to and use of CPNI subjects them to disciplinary procedures, up to and including dismissal.
- Example of language to include in employee handbook, etc:

Federal law imposes restrictions on the use of Customer Proprietary Customer Information (CPNI). In practical terms, CPNI is information about subscribers obtained by a carrier through the provision of telecom services to its subscribers that is extremely personal to subscribers and valuable to carriers such as the numbers that they call and from which they receive calls, when and how frequently they make calls as well as the types of service offerings to which the customer subscribes and the extent the service is used. It also includes information contained on subscribers' bills.

Employees of the Company who have access to or use CPNI are required to receive training and have access to the Company's CPNI Manual. The Company's CPNI Compliance Manual includes federal laws and rules governing use of CPNI. This training includes, but is not limited to, training with respect to when the employee is and is not authorized to access and use CPNI. It is the responsibility of the employee to ensure completion of the Company's CPNI training and review the Company's CPNI manual. Employees that fail to receive this training or fail to comply with federal rules and/or company policies regarding access to and use of CPNI are subject to disciplinary action, up to and including dismissal.

C. Carriers must keep a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI

1. We recommend that companies maintain a log that includes instances where CPNI was disclosed to third parties or where third parties were allowed to access CPNI is listed.
2. The log must be kept for at least a year and can be kept electronically.

D. Annual CPNI Certification – File with FCC on March 1st

1. Officer of Company Must Sign Certificate and File with the FCC by March 1 of Each Year
Telecom carriers must have an officer, as an agent of the carrier, sign a CPNI compliance certificate and file it with the FCC by March 1st each year. The filing requirement is part of the FCC's new rules. (Previously, the FCC required carriers to execute the certificate and maintain it in a publicly available file).

2. Certificate Must State that Procedures are Adequate
The certificate must state that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the FCC's CPNI rules.
3. Statement Must Accompany Certificate
The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the FCC's CPNI rules.
4. Actions Against Data Brokers and Summary of Customer Complaints Received in Past Year Must Accompany Certificate
Under the FCC's new rules, the FCC requires carriers to include with the certification and statement an explanation of any actions taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.
 - By "actions," the FCC means that carriers should report on proceedings instituted or petitions filed by a carrier at either state commissions, the court system, or at the Commission against data brokers.
 - The summary of customer complaints should include a report on the number of customer complaints a carrier has received related to unauthorized access to CPNI, or unauthorized disclosure of CPNI, broken down by category of complaint (for example, instances of improper access by employees, instances of improper disclosure to individuals not authorized to receive the information, or instances of improper access to online information by individuals not authorized to view the information). Additionally, carriers must report on any information that they have with respect to the processes pretexters are using to attempt to access CPNI, and what steps carriers are taking to protect CPNI.

E. Safeguards on the Disclosure of CPNI

(New Safeguard Rules - see section 3(II) for further discussion regarding password requirements and alternatives to using passwords, section 3(III) for rules regarding notification of account changes and section 3(IV) for the business customer exemption).

1. General Rules Governing the Safeguarding on the Disclosure of CPNI.

- Carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.
- Carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit.

2. Rules Governing Telephone Access to CPNI

(see Section 3(II)(A) for JSI's recommendations regarding compliance with these rules)

Carriers may only disclose call detail information over the telephone, based on customer-initiated telephone contact, in the following instances:

- (a) If the customer is able to provide call detail information to the carrier during a customer-initiated call without the carrier's assistance, then the carrier is permitted to discuss the call detail information provided by the customer.
- (b) The carrier may disclose call detail information by sending it to the customer's address of record, or, by calling the customer at the telephone number of record.
 - "Address of record," whether postal or electronic, is an address that the carrier has associated with the customer's account for at least 30 days.
 - "Telephone number of record" is the telephone number associated with the underlying service, not the telephone number supplied as a customer's "contact information."
- (c) The customer first provides the carrier with a password, that is not prompted by the carrier asking for readily available biographical information, or account information.

- “Readily available biographical information” is information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.
- To establish a password, a carrier must authenticate the customer without the use of readily available biographical information, or account information.
- Carriers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information.
- If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer must establish a new password.

3. Online access to CPNI.

- A carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to a telecom service account.
- Once authenticated, the customer may only obtain online access to CPNI related to a telecom service account through a password, as described in number 2 above that is not prompted by the carrier asking for readily available biographical information, or account information.

4. In-store access to CPNI

- A carrier may disclose CPNI to a customer who, at a carrier’s retail location, first presents to the carrier or its agent a valid photo ID matching the customer’s account information.

5. Notification of account changes

- As noted under number I(A) above, carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed.
- This notification is not required when the customer initiates service, including the selection of a password at service initiation.
- This notification may be through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record, and must not reveal the changed information or be sent to the new account information.

6. Business Customer Exemption

- Carriers may bind themselves contractually to authentication regimes other than those described in this section for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI.

SECTION 5

NOTICE AND SAFEGUARD REQUIREMENTS FOR CARRIERS THAT USE CPNI FOR MARKETING PURPOSES WHEN CUSTOMER APPROVAL IS REQUIRED

I. Notice Requirements if Customer Approval is Required

A. Notice Requirements Common to Both Opt-in and Opt-out

1. Prior to any solicitation for customer approval, a telecom carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.
2. A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.
3. Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.
4. Content of Notices - Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI. (sample opt-out and opt-in letters can be found in Section III below)
 - The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.
 - The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.
 - The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.
 - The notification must be comprehensible and must not be misleading.

- If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.
- If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.
- A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.
- A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.
- The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.
- A telecom carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

B. Notice and Timeline Specific to Opt-Out

1. Notice

- Carriers using the opt-out method must provide notices to customers every two years.
- The content of any such notification must comply with the content requirements set forth under I(A)(4) above. A sample opt-out notice can be found in section III(A).
- Notification may be made by electronic or written methods, but not by oral communication.
- If the company sends the notice by e-mail, it must:

- obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;
 - allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;
 - send all opt-out e-mail notices that are returned to the carrier as undeliverable to the customer in another form before carriers may consider the customer to have received notice;
 - ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and
 - make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.
- Examples of opt-out mechanisms:
 - postage-paid return postcard
 - a toll free number
 - a secure Internet page, and/or an e-mail address to receive opt-outs
 - a form or other mechanism that could be returned with a customer's bill payment

2. Timeline for Opt-out Approval

- Carriers must provide the customer with 30 days to respond after he/she has received adequate written or electronic notification. A carrier may, in its discretion, provide for a longer period.
- In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent.
- In the case of notification by mail, allow 3 days so total of 33 days. Example: Day 1 through 33 – if customer opts out, do not use CPNI for marketing. Day 34 forward – if no opt-out

communication from customer, authorization assumed excluding use for marketing non-communications services or providing CPNI to third parties.

Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

C. Notice Specific to Opt-In

A telecom carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods.

If oral, telecom carrier

- bears the burden of demonstrating that such approval has been given in compliance with the FCC's Rules;
- must have a reasonable basis of recording oral approval – record information, party, date, time, outbound or inbound call;
- before obtaining oral approval, must explain CPNI rights and uses.

The content of any such notification must comply with the content requirements set forth under I(A)(4) above. A sample opt-in notice can be found in section III(B) below.

D. Notice Specific to Streamlined Consent for One-Time Use of CPNI

Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

The contents of any such notification must comply with the content requirements set forth under I(A)(4) above except that carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

- Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;
- Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;

- Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and
- Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

II. Safeguards Requirements that Apply If Customer Approval is Required

A. Carriers Must Implement a System by which the Status of a Customer's CPNI Approval Can be Clearly Established Prior to the Use of CPNI

In its earlier CPNI Rules, the FCC had required carriers to develop and implement software systems that “flag” customer service records in connection with CPNI and to maintain an electronic audit mechanism that tracks access to customer accounts. The FCC later eliminated these requirements and allowed carriers more flexibility by requiring carriers to implement a system by which the status of a customer's CPNI approval can be clearly established prior to access to CPNI. Under the revised rules, carriers no longer had to implement an electronic system.

To establish such a system, we recommend the following:

1. Marketing Campaign Using Opt-Out Method

- Prior to beginning the first marketing campaign, make a master list of all current and former customers to whom notice is being sent.
- Indicate on the list the date the notice was sent to each customer.
- During the 30 day waiting period (or 33 day period if notice is mailed), indicate whether or not response was received.
 - If a response was received, make sure that the list clearly indicates that the customer does not want his/her CPNI used for marketing purposes and

update the customer's records to indicate that CPNI is not to be used for marketing purposes.

- If no response was received, indicate that on the list.
- Ensure that all sales and marketing personnel and any others that will be using CPNI for marketing purposes checks this list first before using the CPNI.
- If a customer contacts you to change his/her status, make sure that the status is changed on the master list, appropriate customer service records are updated and inform all sales staff, marketing personnel or others that may be using CPNI for marketing campaigns.
- Every two years after sending the first notice, opt-out notices must be sent and notices must be sent with each new marketing campaign that would include new customers that were not on the initial list. Prior to sending these notices, update the master list to reflect any new customers to whom the notice will be sent and any former customers to whom the notice will not be sent. Then follow the same process that is outlined above when the first notice was sent.

2. Marketing Campaign Using Opt-In Method

- Prior to beginning the first marketing campaign, make a master list of all current and former customers to whom notice is being sent
- Indicate on the list the date the notice was sent to each customer
- Indicate whether or not response was received.
 - If no response is received, make sure that the list clearly indicates that the customer does not want his/her CPNI used for marketing purposes and update the customer's records to indicate that CPNI is not to be used for marketing purposes.
 - If a response was received, indicate that on the list.

- Ensure that all sales and marketing personnel and any others that will be using CPNI for marketing purposes checks this list first before using the CPNI.
- If a customer contacts you to change his/her status, make sure that the status is changed on the master list, appropriate customer service records are updated and inform all sales staff, marketing personnel or others that may be using CPNI for marketing campaigns.
- Notices must be sent with each new marketing campaign that would include new customers that were not on the initial list. Prior to sending these notices, update the master list to reflect any new customers to whom the notice will be sent and any former customers to whom the notice will not be sent. Then follow the same process that is outlined above when the first notice was sent.

B. Carriers Must Maintain a Record of the Campaigns

In addition to the system described above, FCC rules require the following:

1. All carriers must maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI.
2. Keep a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI.
3. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign.
4. The record must be retained for a minimum of one year.
Note: Original CPNI Safeguard Rules required electronic record keeping. The FCC eased the standard in response to industry petitions.

We recommend that this recordkeeping requirement be fulfilled by keeping a log which lists the marketing campaigns which are conducted by the company and its affiliates in which CPNI is used. The log should list and describe each marketing campaign including the specific type of CPNI that was used and what

products and services were offered. The log should also include a place where instances where CPNI was disclosed to third parties or where third parties were allowed to access CPNI is listed (please note that this recordkeeping requirement is also listed under Section 4(II)(C) as a requirement for all carriers). The log must be kept for at least a year and can be kept electronically.

C. Supervisory Review Process

FCC CPNI rules require telecom carriers to establish a supervisory review process regarding carrier compliance with the rules for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

We recommend that in order to fulfill this requirement, prior to conducting the first marketing campaign in which CPNI will be used, a management level staff person be appointed as supervisor of the process. The supervisor should establish procedures by which sales staff must obtain approval of any proposed outbound marketing campaigns in which customer approval (opt-out or opt-in) would be sought. The supervisor would also be responsible for ensuring that the notices and the way they are sent and handled comply with FCC rules and that the appropriate lists and logs are maintained as described above in Sections II(A) and (B). Additionally, the supervisor would monitor the campaigns and keep records of how campaigns are conducted. These records would be kept for a minimum of one year.

D. Reporting Requirement Specific to Use of the Opt-Out Method

FCC rules require carriers that use the opt-out method to provide a letter within five business days to the FCC of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly. The notice must be submitted even if the carrier offers other methods by which customers may opt-out. The notice must include:

- the carrier's name
- a description of the opt-out mechanism(s) used
- the problem(s) experienced
- the remedy proposed
- when it will be/was implemented
- whether the relevant state commission(s) has been notified
- whether the company has taken any action
- whether a copy of the notice has been provided to customers

- contact information.

III. Sample Opt-Out and Opt-In Notices

A. SAMPLE OPT-OUT NOTICE

[Please note that if sending this notice by e-mail, certain restrictions apply which are outlined in Section I(B)(1) above. Also note that in addition to the initial notice, the opt-out notice must be provided to customers every two years]

YOUR CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI) RIGHTS

The ABC Telephone Company and its affiliated companies, ABC Long Distance, ABC Wireless, ABC Broadband and ABC Video, provide a vast array of telecommunications and video services including local, long distance, wireless, Internet access and video. Together, we comprise the ABC Telecommunications Family of Companies. In this notice, we want to assure you that we always take great care in the way that we handle sensitive information that pertains to your account, known as Customer Proprietary Network Information or CPNI. We also provide you with an opportunity to let us know if you do not want us to use your CPNI data to market to you new service offerings.

Restrictions Apply to the Way We Use CPNI

CPNI includes the type, technical arrangement, quantity, destination and amount of use of telecommunications services and related billing for those services. Thus, it contains very sensitive and personal information. Please be aware that you have a right to have this information treated confidentially and ABC Telecommunications Family of Companies and its agents have an obligation under federal law to treat all information that relates to your CPNI, including your calling and billing information, in a confidential manner.

Only the ABC Telecommunications Family of Companies and its authorized agents will use your CPNI. CPNI data will not be shared by the ABC Telecommunications Family of Companies and its agents with any other company or entity without your approval, except to provide the service or services to which you are already subscribed, or where we are required or authorized by law, regulation or other controlling authority to share the information with an outside party.

May We Use Your CPNI to Better Inform You of Other Service Offerings?

With this in mind, we would like you to know that Federal Communications Commission (FCC) regulations give you a choice – a choice about how the ABC Telecommunication Family of Companies can use your CPNI to let you know about the availability of innovative services offerings or service packages that you may have not anticipated or even knew that we were able to provide to you.

You will also be able to enjoy savings and may even be able to combine all these services on one monthly bill.

Under FCC rules, the ABC Telecommunications Family of Companies is allowed to share your CPNI among its divisions or affiliates that provide services to which you do not already subscribe unless you tell us otherwise. If you do not want the ABC Telecommunications Family of Companies to share your CPNI with its divisions or affiliates that provide services to which you do not already subscribe, you may “opt-out” by notifying us within the next 30 days in the following manner:

[Use one or more of the following methods. Responding must be free to customer and electronic or telephone methods must be 24X7].

- Call the ABC Telephone Company office at our toll-free number (8XX) NXX-XXXX within 30 days to register your request. You may call anytime, twenty-four hours a day, seven days a week.
- Return by United States Postal Service mail the enclosed postage-paid postcard to register your request. Mark the indicated box on the card and sign it before mailing.
- E-mail ABC at XXXXXXXXXX@ABC.com. Be sure to include in your email the name that appears on your account with ABC, the telephone number associated with your account and a statement that you wish the ABC Telecommunications Family of Companies to “restrict use of my CPNI.”

“Opting Out” Does Not Affect Your Current Service

The restriction will remain in effect until you notify us otherwise. Restricting use of your CPNI will not affect the services that you currently have with ABC Telecommunications Family of Companies. Please note that restricting your CPNI will not eliminate all of our marketing contacts with you. You could still receive marketing contacts from us that are not based on your CPNI. Also, FCC rules permit the ABC Telecommunications Family of Companies to use your CPNI to contact you about additional service offerings related to the services to which you already subscribe or to market other service offerings with your permission in the context of a customer service call.

You Can Always Change Your Mind

You can always change your mind about ABC Telecommunications Family of Companies’ use of CPNI simply by telling us. Your instructions to our family of companies will remain in effect until you revoke or limit that approval or denial. (Please be aware that every two years, we send notices similar to this one to remind customers of their options). Regardless of whether you decide to “opt-out” or not, the ABC Telecommunications Family of Companies is committed to continuing to provide you with the same high quality services that you have come to expect from us.

If you have any questions or would like additional information regarding our use of CPNI, please contact customer service at number (8XX) NXX-XXXX.

B. SAMPLE OPT-IN NOTICE

[Please note that obtaining approval via opt-in can be through oral, written or electronic means. If obtaining approval via oral means, certain restrictions apply which are outlined in Section I(C) above.]

YOUR CUSTOMER PROPRIETARY NETWORK INFORMATION (CPNI) RIGHTS

The ABC Telephone Company and its affiliated companies, ABC Long Distance, ABC Wireless, ABC Broadband and ABC Video, provide a vast array of telecommunications and video services including local, long distance, wireless, Internet access and video. Together, we comprise the ABC Telecommunications Family of Companies. In this notice, we want to assure you that we always take great care in the way that we handle sensitive information that pertains to your account, known as Customer Proprietary Network Information or CPNI. We also provide you with an opportunity to let us know if you do not want us to use your CPNI data to market to you new service offerings.

Restrictions Apply to the Way We Use CPNI

CPNI includes the type, technical arrangement, quantity, destination and amount of use of telecommunications serves and related billing for those services. Thus, it contains very sensitive and personal information. Please be aware that you have a right to have this information treated confidentially and ABC Telecommunications Family of Companies and its agents have an obligation under federal law to treat all information that relates to your CPNI, including your calling and billing information, in a confidential manner.

Only the ABC Telecommunications Family of Companies and its authorized agents will use your CPNI. CPNI data will not be shared by the ABC Telecommunications Family of Companies and its agents with any other company or entity without your approval, except to provide the service or services to which you are already subscribed, or where we are required or authorized by law, regulation or other controlling authority to share the information with an outside party.

May We Use Your CPNI to Better Inform You of Other Service Offerings?

With this in mind, we would like you to know that Federal Communications Commission (FCC) regulations give you a choice – a choice about how the ABC Telecommunication Family of Companies can use your CPNI to let you know about the availability of innovative services offerings or service packages that you may have not anticipated or even knew that we were able to provide to you.

You will also be able to enjoy savings and may even be able to combine all these services on one monthly bill.

Under FCC rules, the ABC Telecommunications Family of Companies is allowed to share your CPNI among its divisions or affiliates that provide services to which you do not already subscribe if you give us your affirmative, express consent. If you want the ABC Telecommunications Family of Companies to share your CPNI with its divisions or affiliates that provide services to which you do not already subscribe, you may “opt-in” by notifying us in the following manner:

[Use one or more of the following methods]

- Call the ABC Telephone Company office at our toll-free number (8XX) NXX-XXX. You may call anytime, twenty-four hours a day, seven days a week.
- Please sign and date where indicated below and return one copy of this notice by United States Postal Service mail in the postage paid envelope provided.

I give my authorization for ABC Telecommunications Family of Companies to use CPNI obtained from my current services to let me know about innovative services offered by divisions or affiliates of the ABC Telecommunications Family of Companies to which I do not currently subscribe.

Authorized Subscriber Signature

Date

Telephone Number

Your Current Service Will Not Be Affected Regardless of Whether or Not You “Opt-In”

The restriction will remain in effect until you notify us otherwise. Restricting use of your CPNI will not affect the services that you currently have with ABC Telecommunications Family of Companies. Please note that restricting your CPNI will not eliminate all of our marketing contacts with you. You could still receive marketing contacts from us that are not based on your CPNI. Also, FCC rules permit the ABC Telecommunications Family of Companies to use your CPNI to contact you about additional service offerings related to the services to which you already subscribe or to market other service offerings with your permission in the context of a customer service call.

You Can Always Change Your Mind

You can always change your mind about ABC Telecommunications Family of Companies’ use of CPNI simply by telling us. Your instructions to our family of companies will remain in effect until you revoke or limit that approval or denial. Regardless of whether you decide to “opt-in” or not, the ABC

Telecommunications Family of Companies is committed to continuing to provide you with the same high quality services that you have come to expect from us.

If you have any questions or would like additional information regarding our use of CPNI, please contact customer service at number (8XX) NXX-XXXX.

SECTION 6

EXAMPLES OF WHEN CPNI IS USED FOR MARKETING PURPOSES

EXAMPLE 1

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES ONLY TO LOCAL SERVICE

- CPNI can be used for marketing without prior customer approval only for marketing Local Exchange services and services necessary to, or used in, the provision of the local exchange service which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the local exchange service
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion

Services to Which the Customer Does Not Subscribe

- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing long distance.

EXAMPLE 2

SERVICE OFFERINGS



SUBSCRIBED SERVICES

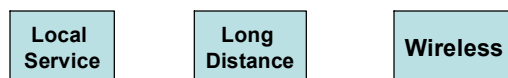


CUSTOMER SUBSCRIBES TO LOCAL AND LONG DISTANCE SERVICES

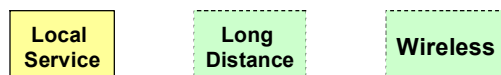
- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the local exchange service
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion

EXAMPLE 3

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO ONLY TO LOCAL SERVICE

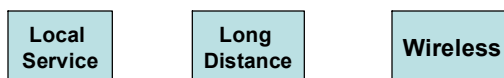
- CPNI can be used for marketing without prior customer approval only for marketing Local Exchange services and services necessary to, or used in, the provision of the Local Exchange service which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange service
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion

Services to Which the Customer Does Not Subscribe

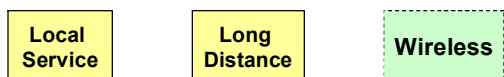
- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing Long Distance and Wireless services.

EXAMPLE 4

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO ONLY TO LOCAL AND LONG DISTANCE SERVICE

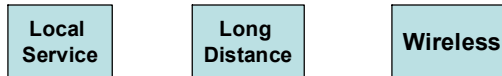
- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion

Services to Which the Customer Does Not Subscribe

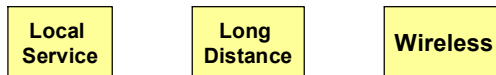
- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing Wireless services.

EXAMPLE 5

SERVICE OFFERINGS



SUBSCRIBED SERVICES

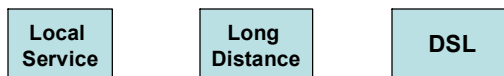


CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE AND WIRELESS SERVICES

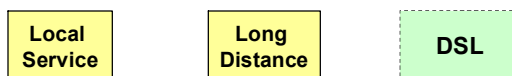
- CPNI can be used for marketing without prior customer approval for marketing Local Exchange, Long Distance and Wireless services and services necessary to, or used in, the provision of the Local Exchange, Long Distance and Wireless services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange, Long Distance and Wireless services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion for the Local Exchange and Long Distance services and all information services for the Wireless Services (excluding Internet access services)

EXAMPLE 6

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL AND LONG DISTANCE SERVICES

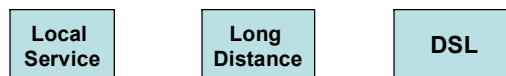
- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion

Services to Which the Customer Does Not Subscribe

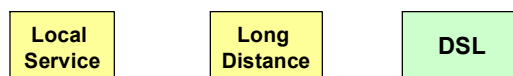
- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing DSL.

EXAMPLE 7

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE AND DSL SERVICES

- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion
- Because DSL is not a telecommunications service, the total service approach does not apply. Because DSL is considered a communications-related service, the CPNI derived from providing the Local Exchange and Long Distance services can be used to market the DSL service through either the opt-out or opt-in methods.
 - However, if the division/affiliate that provides the DSL wishes to share information derived solely because of its provision of the DSL service, the division/affiliate may share information with the local exchange and long distance service divisions/affiliates. This is because the provision of DSL is not a telecommunications service and thus is not subject to the FCC's CPNI rules.

EXAMPLE 8

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE AND DSL SERVICES

- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion
- Because DSL is considered a communications-related service, the CPNI derived from providing the Local Exchange and Long Distance services can be used to market the DSL service through either the opt-out or opt-in methods.

Services to Which the Customer Does Not Subscribe

- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.

EXAMPLE 9

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE, DSL AND VIDEO SERVICES

- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol
- Because DSL is considered a communications –related service, the CPNI derived from providing the Local Exchange and Long Distance services can be used to market the DSL service through either the opt-out or opt-in methods.
- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.
 - If the division/affiliate that provides the video service wants to share the “personally identifiable information” derived from providing the video service, it must follow the privacy rules that are set forth in Section 631 of the Act.

EXAMPLE 10

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE, DSL AND VIDEO SERVICES

- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion
- Because DSL is considered a communications –related service, the CPNI derived from providing the Local Exchange and Long Distance services can be used to market the DSL service through either the opt-out or opt-in methods.
- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.

Services to Which the Customer Does Not Subscribe

- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing Wireless services.

EXAMPLE 11

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE, DSL, VIDEO AND WIRELESS SERVICES

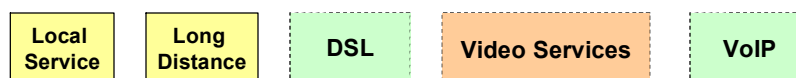
- CPNI can be used for marketing without prior customer approval for marketing Local Exchange, Long Distance and Wireless services and services necessary to, or used in, the provision of the Local Exchange, Long Distance and Wireless services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange, Long Distance and Wireless services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion for the Local Exchange and Long Distance services and all information services for the Wireless Services (excluding Internet access services)
- Because DSL is considered a communications – related service, the CPNI derived from providing the Local Exchange and Long Distance services can be used to market the DSL service through either the opt-out or opt-in methods.
- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.

EXAMPLE 12

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES ONLY TO LOCAL AND LONG DISTANCE SERVICES

- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion

Services to Which the Customer Does Not Subscribe

- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing DSL.
- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.
- Because VoIP is a communications-related service, CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing the VoIP service.

EXAMPLE 13

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO LOCAL, LONG DISTANCE, DSL AND VIDEO SERVICES

- CPNI can be used for marketing without prior customer approval for marketing Local Exchange and Long Distance services and services necessary to, or used in, the provision of the Local Exchange and Long Distance services which includes:
 - adjunct-to-basic services
 - the provision of inside wiring installation, maintenance, and repair services
 - CPE necessary to, or used in, the provision of the Local Exchange and Long Distance services
 - call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, protocol conversion
- Because DSL is considered a communications – related service, the CPNI derived from providing the Local Exchange and Long Distance services can be used to market the DSL service through either the opt-out or opt-in methods.
- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.

Services to Which the Customer Does Not Subscribe

- Because VoIP is a communications-related service, CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing the VoIP service.

EXAMPLE 14

SERVICE OFFERINGS



SUBSCRIBED SERVICES



CUSTOMER SUBSCRIBES TO DSL, VIDEO AND VOIP SERVICES

- CPNI can be used for marketing without prior customer approval for marketing VoIP Services and services necessary to, or used in, the provision of the VoIP services which includes adjunct-to-basic services
- Because neither VoIP nor DSL are telecommunications services, the total service approach does not apply. Because DSL is considered a communications-related service, the CPNI derived from providing the VoIP service can be used to market the DSL service through either the opt-out or opt-in methods.
- CPNI can be used for marketing with prior customer approval using the opt-in method for marketing video services.

Services to Which the Customer Does Not Subscribe

- CPNI can be used for marketing with prior customer approval using either the opt-out or opt-in methods for marketing Local Exchange and Long Distance Services.

SECTION 7

FREQUENTLY ASKED QUESTIONS

FREQUENTLY ASKED QUESTIONS

TABLE OF CONTENTS

QUESTIONS PERTAINING TO SECTION 1

The Definition of CPNI and the Rules That Apply

1.Q. In plain language, what is CPNI?	85
2.Q. What federal rules govern the use of CPNI?.....	85
3.Q. What types of carriers must comply with federal CPNI rules?	86
4.Q. Why do we have restrictions on the use of CPNI?	86
5.Q. When and how can CPNI be used?.....	87
6.Q. Can an ILEC use CPNI related to former customers to attempt to “Win Back” those customers?.....	89
7.Q. For a returning customer, can an ILEC use CPNI acquired during the previous subscription of the customer?	90
8.Q. What if an ILEC customer currently receives long distance service from an affiliated long distance provider as part of a bundle, and execution of a PIC change order would break the bundle – causing the customer to pay higher unbundled rates for the other services in the bundle?	90
9.Q. What is not considered CPNI?	90
10.Q. Are there any limitations on an ILEC or an ILEC affiliate being able to use a list of its customers’ names, addresses and telephone numbers for marketing services related to the provision of its local exchange service?	92
11.Q. Can an ILEC provide its customers’ names, addresses and telephone numbers to its affiliated long distance company so that the long distance affiliate can market its long distance services or to its affiliated video provider so that the video provider affiliate can market its video services?	92

- 12.Q. Can my ILEC or ILEC affiliate call its customers using a list of its customers' names and addresses to market new service offerings? 93
- 13.Q. Can my affiliated wireless carrier call its customers on their wireless phones using a list of its customers' names and addresses to market wireless services? 93
- 14.Q. If I use a list of my customers' names, addresses and phone numbers to market my ILEC offerings, must I make that list available to others on a non-discriminatory basis? 93

QUESTIONS PERTAINING TO SECTION 2

Using CPNI for Marketing Purposes

- 15.Q. Why should a carrier use CPNI for marketing purposes? 94
- 16.Q. Can an ILEC use CPNI for marketing purposes without obtaining customer approval? 94
- 17.Q. When is customer approval required before an ILEC can use CPNI for marketing purposes? 96
- 18.Q. What are the Ways that Approval Can Be Obtained? 96
- 19.Q. What type of approval can be used to Market a Communications-Related Service? 96
- 20.Q. What are communications-related services? 97
- 21.Q. What type of approval is required to share CPNI with divisions/affiliates or agents that provide no communications-related services or to market these services? 98
- 22.Q. My ILEC affiliated Internet Service Provider ("ISP") only operates a website and does not provide any communications-related services. Does my ILEC have to use opt-in if it wants to use CPNI derived from the provision of the ILEC service to market the services of the ISP? 98
- 23.Q. My ILEC has an affiliated company that provides video service. Does my ILEC have to use opt-in if it wants to use CPNI derived from the provision of the ILEC service to market the video service? 99
- 24.Q. What method of customer approval must be used for obtaining approval to share CPNI with joint venture partners and independent contractors or to market their services? 99

25.Q. What method of customer approval must be used to obtain permission to share CPNI with unrelated third parties?.....	100
26.Q. Are there any limitations on marketing services to new customers?	100
27.Q. Can an ILEC use new local service subscriptions or new wireless service subscriptions to market long distance services in either of the following manners?	100
28.Q. Can an ILEC e-mail its opt-out notice to its customers?	101
29.Q. What kind of CPNI notice is required for new customers?	101
30.Q. Can an ILEC use knowledge regarding customer subscription to a second line to market dial-up Internet service or DSL.....	101
31.Q. In the event an ILEC launches an interconnected VoIP service within its own ILEC service area, can the ILEC use CPNI to market the VoIP provider's services?	102
32.Q. What is One-Time Use Approval?.....	102

QUESTIONS PERTAINING TO SECTION 3

New CPNI Rules

Password Requirements

33.Q. Will my company need to create a password for every customer?.....	103
34.Q. Does the FCC have a procedure for authenticating a customer prior to establishing a customer password?	103
35.Q. Do the new password requirements replace my company's existing authentication methods (i.e. - Social Security Number, Mother's Maiden Name)?.....	103
36.Q. What is considered "Call Detail Information"?	104
37.Q. What is "biographical" information and why can't I use this information to confirm the identity of the customer when establishing a password?	104
38.Q. Our company already has password protection for some or all of our customers. Is there anything else we must do to comply with the new rules concerning password protection?	104

- 39.Q. Can our company assist the customer with billing questions without requiring a password? 104
- 40.Q. Can passwords be created at the time of new service establishment? 105
- 41.Q. How should our company authenticate a customer's identity when establishing a password? 105
- 42.Q. If a company places a randomly generated PIN on the customer's bill, does the PIN become part of the account information that cannot be used to authenticate the customer for password establishment? 105

Notification of Account Changes

- 43.Q. Must our company notify customers of any changes to their account? 105
- 44.Q. Can the company tell the customer what account information has been changed? For example, can the company tell the customer that their address has changed, but not indicate what it has changed to?..... 106
- 45.Q. When a customer disconnects service, and leaves a new forwarding address in order to receive their last bill does the company need to provide notification of the change of address? 106
- 46.Q. How can account change notification be completed? Can the company use e-mail in lieu of standard mail? 106

Unauthorized Disclosure of CPNI

- 47.Q. What constitutes a "breach" of CPNI? 106
- 48.Q. How quickly must my company notify law enforcement of a breach in a customer's CPNI? 107
- 49.Q. Is the customer and law enforcement to be notified at the same time of a suspected breach in the customer's CPNI? 107
- 50.Q. To which law enforcement agencies does my company report CPNI breaches? 107

Joint Venture and Independent Contractor Use of CPNI

- 51.Q. Can my company continue to use the Opt-Out Approval method in order to share CPNI with Joint Venture and/or Independent Contractors?..... 107
- 52.Q. Can my company continue to share CPNI with our billing vendor without obtaining Opt-In Approval from the customer? 107
- 53.Q. Does the change in FCC rules requiring opt-in approval for joint venture and independent contractors affect rules pertaining to marketing CPNI to my company's agents or affiliates?..... 107

QUESTIONS THAT PERTAIN TO SECTION 4 **Notification and Safeguard Requirements that** **Apply to all Carriers**

Notification of Account Changes

- 54.Q. When are carriers required to notify customers of account changes?..... 108
- 55.Q. How can carriers notify customers of account changes? 108

Notification of CPNI Security Breaches

- 56.Q. What are the procedures for notifying law enforcement of a breach of a customer's CPNI and where does the company file federal reports of a breach in a customer's CPNI? 108
- 57.Q. When should a customer be notified that a breach in his/her CPNI has occurred? 109
- 58.Q. What are the recordkeeping requirements for breaches that occur? 110

Safeguard Requirements

- 59.Q. What are the safeguard requirements that apply to all carriers? 110

CPNI Annual Certification

- 60.Q. What must be contained in the annual CPNI certification?..... 110
- 61.Q. How long must the company retain the annual CPNI certification? 111
- 62.Q. If a telecom services provider operates under a single name but through multiple affiliated legal entities, does each affiliate have to

have its own CPNI policies and procedures and its own annual CPNI Self-Certification?	111
---	-----

Safeguard Requirements regarding the Disclosure of CPNI

63.Q. What are the general safeguard requirements that apply regarding the disclosure of CPNI?	111
64.Q. What are JSI's recommendations regarding how carriers can comply with the requirements that apply when discussing call detail information over the telephone with customers?	112
65.Q. What are the requirements that pertain to the establishment of passwords?	113
66.Q. What are the requirements that pertain to online access to CPNI?	113
67.Q. How can a customer discuss billing questions when he/she comes to the telephone company's retail location?	113
68.Q. Are there any notification requirements regarding changes in passwords?	114
69.Q. Are there any exceptions for business customers?	114

QUESTIONS PERTAINING TO SECTION 5

Notice and Safeguard Requirements For Carriers that use CPNI for Marketing Purposes When Customer Approval is Required

Notice Requirements

70.Q What must notices for opt-out and opt-in approval contain?	115
71.Q. What additional notice requirements apply to opt-out approval notices?	116
72.Q. What are some examples of how carriers can obtain responses to opt-out notices?	117
73.Q. After sending the customer an opt-out notice, how long must a carrier allow the customer to respond before assuming that the customer has given approval under the opt-out approval method?	117
74.Q. How long does opt-out approval last?	117

75.Q. How can the customer notify the carrier that the customer is electing to terminate opt-out approval?	118
76.Q. What additional notice requirements are there for notification for soliciting opt-in approval?	118
77.Q. How long does opt-in approval last?.....	118
78.Q. What are the notice requirements specific to streamlined consent for one-time use of CPNI?	118

Safeguard Requirements

79.Q. What are the safeguard requirements that apply if customer approval is required?.....	119
80.Q. My company is using the opt-out approach. How should my company implement a system for ensuring that the status of a customer's CPNI can be clearly established prior to the use of CPNI?	119
81.Q. My company is using the opt-in approach. How should my company implement a system for ensuring that the status of a customer's CPNI can be clearly established prior to the use of CPNI?	120
82.Q. What does my company need to do in order to comply with the requirement to maintain a record of the marketing campaigns?.....	121
83.Q. How should a company implement a supervisory review process?	121
84.Q. What are the reporting requirements that are specific to the use of the opt-out method?	122

QUESTIONS PERTAINING TO SECTION 1

The Definition of CPNI and the Rules That Apply

1.Q. In plain language, what is CPNI?

In practical terms, Customer Proprietary Network Information (CPNI) is information about subscribers obtained by a telecommunications carrier through the provision of telecom services to its subscribers that is extremely personal to subscribers and valuable to carriers such as the numbers that they call and from which they receive calls, when and how frequently they make calls as well as the types of service offerings to which the customer subscribes and the extent the service is used. It also includes information contained on subscribers' bills.

Examples of CPNI include:

- Data available to an incumbent local exchange carrier in carrier access billing (CABS) records (EMI Category 11 Records) including calling parties, called-parties and call volumes;
- The identity of a customer's Preferred Interexchange Carrier (PIC);
- The volume of calls a customer makes;
- The amount a customer has been billed by a long distance carrier;
- The phone numbers called by a consumer, the length of phone calls, and services purchased by a consumer, such as call waiting; and
- Call detail information on customers' bills

2.Q. What federal rules govern the use of CPNI?

In the 1996 Telecommunications Act, Congress enacted Section 222 which is now incorporated as part of the Communications Act of 1934, as amended (the "Act"). Section 222 crystallized the privacy rights belonging to telecommunications customers related to information possessed by telecommunications carriers including local exchange carriers. A copy of Section 222 of the Act can be found in Appendix 1.

Pursuant to Section 222 of the Act, the FCC issued a number of decisions regarding CPNI which established rules that govern the use of CPNI and apply to all telecommunications carriers. The FCC's most recent Order in its CPNI proceeding was released in April 2007 and will become effective six months after the order's effective date or on receipt of Office of Management and Budget (OMB) approval, whichever is later. The effective date of the Order is June 8, 2007. Because OMB has yet to grant its approval, we know that the new rules will not become effective until after December 8, 2007. Small carriers will receive an additional six months to implement the rules pertaining to online password requirements.

The FCC's CPNI rules can be found in Part 64 of the FCC's Rules, Subpart U. A copy of the FCC's Rules governing CPNI, including the new CPNI rules, (47 CFR §§ 64.2001-20101) can be found in Appendix 1. A table listing the major FCC CPNI decisions can be found in Appendix 2.

3.Q. What types of carriers must comply with federal CPNI rules?

The federal CPNI rules apply to all telecommunications carriers. "Telecommunications carriers" are defined as "any provider of telecommunications services, except that such term does not include aggregators of telecommunications services . . ." 47 U.S.C. § 153(44).

- "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. 47 U.S.C. § 153(46).
- "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(43)
- "Aggregators of telecommunications services" means any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services. 47 U.S.C. §226(a)(2).

In sum, telecommunications carriers include incumbent and competitive local exchange companies, long distance companies and Commercial Mobile Radio Service (wireless) companies. Additionally, in its new CPNI rules, the FCC changed the definition of a "telecommunications carrier" that it uses solely for the purposes of its CPNI rules such that interconnected VoIP providers would be considered a "telecommunications carrier." (The term "interconnected" refers to "the ability of the user generally to receive calls from and terminate calls to the public switched telephone network"). Thus, for the purposes of the FCC's CPNI rules, "telecommunications carrier," "telecom carrier" or "carrier" include interconnected VoIP providers as well as traditional telecom carriers.

4.Q. Why do we have restrictions on the use of CPNI?

In establishing its rules pursuant to this statutory requirement, the FCC pointed out that CNPI consists of **highly personal information**, particularly relating to call destination, including the numbers subscribers call and from which they receive calls, as well as when and how frequently subscribers make their calls. This data can be translated into subscriber profiles containing information about the identities and whereabouts of subscribers' friends and relatives; which businesses subscribers patronize; when subscribers are likely to be home and/or awake; product and service preferences; how frequently and cost-effectively

subscribers use their telecommunications services; and subscribers' social, medical, business, client, sales, organizational, and political telephone contacts. *CPNI Order* at ¶ 61

5.Q. When and how can CPNI be Used?

1. Section 222 (a) of the Act sets forth the general duty of all telecom carriers to protect the confidentiality of information relating to other carriers, equipment manufacturers and customers including telecom carriers reselling telecom services.
2. Section 222(b) of the Act requires that telecom carriers that receive or obtain proprietary information from another carrier for purposes of providing any telecom service must use such information only for such purpose, and shall not use such information for its own marketing efforts.
3. Section 222(c)(1) of the Communications Act and Section 64.2005(a) of the FCC's Rules specify that telecom carriers can only use CPNI in the following instances:
 - As required by law (see below for exceptions that are provided for in Section 222 and FCC rules);
 - with the approval of the customer (see Section 2 (III) for further discussion regarding obtaining customer approval through: "opt-out," "opt-in" or "streamlined consent for one-time use of CPNI");
 - without the approval of the customer in the provision of the telecommunications service from which such information is derived, or services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories (see Section 2 (II) for further discussion of the FCC's "total service approach" and services that are considered "necessary to, or used in, the provision of such telecommunications service").
4. Section 222(d) of the Act and Section 64.2005(d) of the FCC's Rules provide exceptions to this rule for all telecom carriers. These provisions allow a telecom carrier, either directly or through its agents, to use CPNI:
 - To initiate, render, bill, and collect for telecom services; or
 - To protect the rights or property of the carrier, or to protect users of those services and other carriers from

fraudulent, abusive or unlawful use of, or subscription to, such services

5. Section 222(d) of the Act and Section 64.2005(c)(2) of the FCC's Rules provide exceptions for Commercial Mobile Radio Service ("CMRS" or wireless) providers. Under these provisions, CMRS providers may:
 - Provide call location information concerning the user of a wireless service in certain specified emergency situations;
 - Use, disclose or permit access to CPNI for the purpose of conducting research on the health effects of CMRS
6. Section 64.2005(b) of the FCC's rules prohibits a telecom carrier from using, disclosing or permitting access to CPNI for anticompetitive purposes such as to identify or track customers that call competing service providers.
 - The FCC's rule gives the following example: a local exchange carrier ("LEC") may not use local service CPNI to track all customers that call local service competitors
7. Section 222(c)(2) requires a telecom carrier to disclose CPNI, upon affirmative written request by the customer, to any person designated by the customer.

Please note - Notwithstanding the above requirement that an affirmative written request by the customer be received from the customer before a telecom carrier is permitted to disclose CPNI to a third party, a LEC is permitted to disclose a customer's service record to a competing carrier upon oral approval by a customer prior to commencement of service as part of the duties of a LEC under Section 251(c)(3) (duty to provide Unbundled access (UNEs)) and Section 251(c)(4) (duty to provide resale). In this context, the FCC warned that "a carrier's failure to disclose CPNI to a competing carrier that seeks to initiate service to that customer who wishes to subscribe to a competing carrier's service, may well constitute an unreasonable practice in violation of section 201(b), depending on the circumstances." (Please be reminded that rural telephone companies are exempt from these and other Section 251(c) requirements until the "rural exemption" has been removed).

8. The FCC permits carriers to use CPNI to regain customers who have switched to another carrier (also known as "winback" campaigns). (The FCC previously had a rule prohibiting use of CPNI for this purpose but subsequently eliminated that rule). However, telecom carriers cannot use information regarding a customer's decision to switch carriers (known as "carrier information") to retain the customer. This applies, among other times, when information about a customer is requested from a carrier by a competing carrier in the context when a competing carrier "wins" the customer.
- For example, an ILEC cannot use knowledge of a PIC Change Order that would move the customer from the ILEC affiliated long distance carrier to another long distance carrier in an attempt to retain the current ILEC long distance customer. Only after a reasonable interval following execution of the PIC change can the ILEC seek to "win back" the customer that has now moved to another long distance carrier.
 - Another example would be after a number portability request has been received, the "porting out" carrier cannot seek to "win back" the customer until after the port has been completed.

6.Q. Can an ILEC use CPNI related to former customers to attempt to "Win Back" those customers?

As noted in question 5 above, the FCC permits carriers to use CPNI to regain customers who have switched to another carrier (also known as "winback" campaigns) but prohibits them from using information regarding a customer's decision to switch carriers (known as "carrier information") to retain the customer. "Carrier Information" is defined within the same statute in which CPNI is defined - Section 222(b) of the Communications Act - as "proprietary information from another carrier for purposes of providing any telecommunications service." As an example, the FCC pointed to "switch or PIC orders." As explained in the *CPNI Reconsideration Order*, "competition is harmed if any carrier uses carrier-to-carrier information, such as switch or PIC orders, to trigger marketing campaigns, and consequently prohibit such actions accordingly . . . Thus, where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b)." *CPNI Reconsideration Order*, FCC 98-27 13, FCC Rcd 8061 (rel. Feb. 26, 1998).

Thus, for example, an ILEC cannot use knowledge of a PIC Change Order that would move the customer from the ILEC affiliated long distance carrier to another

long distance carrier in an attempt to retain the current ILEC long distance customer. Only after a reasonable interval following execution of the PIC change can the ILEC seek to “winback” the customer that has now moved to another long distance carrier. Please note that according to the FCC, a “reasonable interval” at a minimum, should be 24 hours after execution of the PIC change in the switch. However, some states have established longer periods of time. The South Carolina and North Carolina LEC winback intervals are, respectively, 10 and 7 days. Thus it is possible that the FCC may ultimately establish a longer interval applicable to ILEC winback of long distance customers.

In the context of its “winback” rules, the FCC emphasized that to the extent that the retail arm of an executing carrier obtains carrier change information through its normal channels in a form available throughout the retail industry, and after the carrier change has been implemented (such as in disconnect reports), use of that information is not prohibited in executing carriers’ winback efforts.

7.Q. For a returning customer, can an ILEC use CPNI acquired during the previous subscription of the customer?

An ILEC may use CPNI of the former customer to offer that customer the service or services to which the customer previously subscribed. Absent obtaining approval for use of CPNI, an ILEC cannot use CPNI from the former customer relationship to offer new services outside the former customer-carrier relationship. See *CPNI Clarification Order* at Paragraphs 72 and 73.

8.Q. What if an ILEC customer currently receives long distance service from an affiliated long distance provider as part of a bundle, and execution of a PIC change order would break the bundle – causing the customer to pay higher unbundled rates for the other services in the bundle?

The fact that ILEC long distance services are provided to a customer as part of a bundle does not affect ILEC’s duty to execute a PIC change order and wait for a reasonable interval before undertaking winback efforts. The only way to preserve the bundle from inadvertent break-up due to a PIC change order would be to combine PIC freezes with the bundle.

9.Q. What is not considered CPNI?

The following is not considered CPNI:

- **Aggregate Customer Information**

Section 222 (h)(2) defines “aggregate customer information” as collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed. Unlike individually

identifiable CPNI, aggregate customer information involves customer information that is not private or sensitive.

- **Subscriber List Information**

Section 222 specifically states that subscriber list information is not considered CPNI. The statute defines subscriber list information as any information that:

- identifies the names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications and
- that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

Because subscriber list information is not CPNI, CPNI rules do not affect ILEC duties with respect to provision of subscriber list information to directory publishers or directory listings to other carriers for directory assistance. Specifically, Section 222(e) created a duty for ILECs to provide subscriber list information on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format. This includes competing directory publishers.

- **Customer's Name, Address and Phone Number**

In addition to Section 222's statements that subscriber list information is not considered CPNI, the FCC in one of its decisions regarding CPNI "clarified" that customers' names, addresses and telephone numbers are part of a carrier's business record or customer list that identifies the customer and not considered CPNI. The FCC ruled that a telecom carrier can contact all of its existing and/or former customers for marketing purposes using a list containing the customers' names, addresses and telephone numbers, so long as it does not use CPNI to select a subset of customers from that list.

Please note that in the sense used here, the list of an ILEC's customers' name, address and telephone number is broader than the customers' names, addresses and telephone numbers that comprise subscriber list information since subscriber list information excludes unlisted numbers and non-published numbers. Thus, the requirement for ILECs to provide subscriber list information to any person under non-discriminatory and reasonable rates, terms and conditions upon request does not apply in the context of when the ILEC is using the broader list of all of its customers' names, addresses and telephone numbers when marketing services related to the provision of its local exchange service.

10.Q. Are there any limitations on an ILEC or an ILEC affiliate being able to use a list of its customers' names, addresses and telephone numbers for marketing services related to the provision of its local exchange service?

In the *First CPNI Clarification Order*, the FCC stated, “[Use of] customers’ name, address, and telephone number for marketing purposes would not be subject to CPNI restrictions because such information is not CPNI. A carrier can contact all of its customers or all of its former customers, for marketing purposes, by using a customer list that contains each customer’s name, address, and telephone number, so long as it does not use CPNI to select a subset of customers from that list.” *CPNI Clarification Order* at para. 9

11.Q. Can an ILEC provide its customers' names, addresses and telephone numbers to its affiliated long distance company so that the long distance affiliate can market its long distance services or to its affiliated video provider so that the video provider affiliate can market its video services?

Although customer list information is not governed by CPNI restrictions and carriers are free to use customers’ names, telephone numbers and addresses to market new services, the FCC warned that telecom carriers have obligations regarding the disclosure of this type of information.

In this context, the FCC cited its Billing Name and Address (BNA) rules which have been interpreted by the FCC to bar telecom providers from using BNA information which has been received from another carrier (which includes customers’ billing names and addresses for unlisted and non-published numbers) for marketing long distance service. (This interpretation was subsequently affirmed by the U.S. Court of Appeals for the District of Columbia).

Accordingly, as stated by the FCC in its *First CPNI Clarification Order* (see cite in question 10 above), an ILEC may use its list of customers’ names, addresses and telephone numbers for marketing purposes, but is restricted under the BNA rules from sharing its customer list with affiliates that offer the services. (Please note that although the FCC did not specify which services could be marketed using customer lists, the FCC did say that CPNI restrictions do not apply. Accordingly, it is our understanding that this would allow for marketing non-telecommunications services such as video services as well as communications-related services).

12.Q. Can my ILEC or ILEC affiliate call its customers using a list of its customers' names and addresses to market new service offerings?

Under the "Do Not Call" requirements, telecom carriers are prohibited from making calls to numbers on the national Do-Not-Call Registry for telemarketing purposes unless the entity has a "preexisting commercial relationship" with the customer. Because the ILEC or ILEC affiliate has a "preexisting commercial relationship" with its customers, it may call the customers to market service offerings except in cases where customers have specifically requested to be placed on the carrier's company-specific "do-not-call" list.

13.Q. Can my affiliated wireless carrier call its customers on their wireless phones using a list of its customers' names and addresses to market wireless services?

Wireless subscribers have come to expect privacy when it comes to their wireless phone numbers. It has been recognized by some in Congress that the wireless phone numbers are generally not publicly available and that privacy of wireless customers' phone numbers has been safeguarded especially since customers are charged for incoming calls. Accordingly, wireless carriers should contact their customers through mailings or other means rather than calling them on their wireless phones to market new services to them.

14.Q. If I use a list of my customers' names, addresses and phone numbers to market my ILEC offerings, must I make that list available to others on a non-discriminatory basis?

Customer names, addresses and phone numbers that a carrier has published, has caused to be published, or has accepted for publication in any directory format are considered subscriber list information. According to Section 222(e) of the Act, incumbent local exchange carriers (ILECs) have a duty to provide subscriber list information on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format. This includes competing directory publishers.

However, this requirement does not apply to customer list information which is much broader since it includes unlisted numbers and non-published numbers. Thus, the requirement for ILECs to provide subscriber list information to any person under non-discriminatory and reasonable rates, terms and conditions upon request does not apply in the context of when the ILEC is using the broader customer list information when marketing services related to the provision of its local exchange service.

QUESTIONS PERTAINING TO SECTION 2

Using CPNI for Marketing Purposes

15.Q. Why should a carrier use CPNI for marketing purposes?

CPNI can be a valuable tool for targeting customer for marketing and retention efforts. Following are some examples CPNI marketing uses:

- Identify high revenue customers for enhanced marketing and customer service efforts to ensure customer retention in the face of competition.
- Informed and effective customer service representative (CSR) response to inbound calls based on understanding of the particular customer's quantity of services, types of service, technical configuration of services, calling volumes and calling patterns.
- Target and refine marketing campaigns based on predictive models which statistically match CPNI data with the probability of purchasing a particular service.
- Customizing and bundling of service offerings to meet the unique requirements of individual customers (residential and/or business).
- Target customers for calling plans based on their individual calling and usage patterns.

16.Q. Can an ILEC use CPNI for marketing purposes without obtaining customer approval?

Yes. Under Section 222(c)(1) of the Act, an ILEC may use CPNI for marketing purposes without obtaining customer approval in the following instances:

1. To market services related to "the telecommunications service" from which such information is derived. The FCC has interpreted this phrase to mean that a telecom carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of telecommunications service offerings to which the customer already subscribes from the same carrier, without customer approval. The three "categories" of telecommunications service are:
 - Local exchange
 - Long distance
 - Commercial Mobile Radio Service (CMRS or wireless).

This means that if a customer subscribes to more than one category of service offered by the carrier (through different divisions in the company or through affiliates), the carrier is permitted to share CPNI among the carrier's divisions/affiliated entities that

provide the service offerings to the customer. The FCC called this interpretation of Section 222(c)(1), the “total service approach.”

2. To market services necessary to, or used in, the provision of such telecommunications service. This means that:
 - (a) All Telecommunications Carriers may use, disclose or permit access to CPNI without customer approval in:
 - The publishing of directories (47 U.S.C. § 222(c)(1)(B);
 - The provision of inside wiring installation, maintenance, and repair services (47 C.F.R. § 64.2005(c)(1).
 - (b) LECs, CMRS and VoIP providers may use, disclose or permit access to CPNI without customer approval:
 - In order to market services formerly known as “adjunct-to-basic services.” (47 C.F.R. § 64.2005(c)(3) – amended by the new rules) These services include but are not limited to: speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain Centrex features.
 - (c) Wireline Carriers (LECs and Long Distance Providers) may use, disclose or permit access to CPNI without customer approval:
 - To market CPE necessary to, or used in, the provision of the telecommunications service that the carrier is providing (47 C.F.R. § 64.2005(b)(1));
 - For the provision of the following information services: call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward and protocol conversion (47 C.F.R. § 64.2005(b)(1)).
 - (d) Wireless Carriers may use, disclose or permit access to CPNI without customer approval:
 - To market CPE necessary to, or used in, the provision of the telecommunications service that the carrier is providing (47 C.F.R. § 64.2005(b)(1);
 - For the provision of information services which includes call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward and protocol conversion (47 C.F.R. § 64.2005(b)(1)). Please note that

the FCC specifically excluded Internet access services from being considered information services that are “necessary to, or used in, the making of a call).

17.Q. When is customer approval required before an ILEC can use CPNI for marketing purposes?

If a customer does not subscribe to all of the telecom offerings that a telecom carrier and its divisions/affiliates provide, the carrier is not permitted to share CPNI with its divisions/affiliates that provide the service offerings to which the customer does not subscribe or to market those telecommunications offerings unless approval from the customer is obtained. Customer approval must also be obtained in order for CPNI to be shared with other divisions/affiliates, agents, joint venture partners, independent contractors or any third parties or to market service offerings of these entities.

18.Q. What are the Ways that Approval Can Be Obtained?

Customer approval can be obtained through:

1. Opt-out: Under this method, a customer is deemed to have consented to the use, disclosure, or access to the customer’s CPNI if the customer has failed to object within the specified waiting period after the customer is provided appropriate notification of the carrier’s request for consent consistent with the FCC’s rules. A sample opt-out notice can be found in Section 5(III)(A).
2. Opt-in: Under this method, the carrier must obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier’s request consistent with the FCC’s requirements. A sample opt-in notice can be found in Section 5(III)(B).
3. Streamlined Consent for One-Time Use of CPNI: Under this approach, a telecom carrier may orally obtain limited, one-time use approval of CPNI from a customer during an inbound or outbound call which lasts for the duration of the call. The FCC cautions carriers to take a conservative approach in deciding which information is necessary for consumers to make informed decisions regarding their CPNI usage.

19.Q. What type of approval can be used to Market a Communications-Related Service?

Either the opt-out or opt-in method of approval can be used to market a communications-related service offered by a carrier’s division, affiliate or agent. In its initial CPNI decisions, the FCC had ruled that only opt-in approval could be

used to obtain customer approval. However, the FCC modified this requirement in response to a decision by the U.S. Court of Appeals for the Tenth Circuit and allowed carriers to obtain customer approval either through opt out or opt in for all use of CPNI by the carriers themselves or for disclosure to their divisions/affiliates or agents when those divisions/affiliates or agents provide communications related services.

20.Q. What are communications-related services?

1. Telecommunications Services: local exchange, long distance or wireless.
2. Information services typically provided by telecommunications carriers: Two specific examples given by the FCC are Internet access (DSL) and voice mail.
 - As noted in Question 16(2)(d) above, for wireless carriers, the FCC specifically excluded Internet access services as being services that are “necessary to, or used in, the provision of such telecommunications service.”
 - As noted in Question 16(2)(c) and (d) above, if the voice mail or other information services are being provided by the LEC or CMRS provider carrier, it may be considered as “necessary to, or used in, the provision of” the telecommunications service. In that case, customer approval would not be required to use the telecom carriers CPNI to market the voice mail services. However, if a division/affiliate or agent of the carrier were providing the voice mail or other information service offering and not the telecom carrier itself, customer approval to use CPNI derived from the telecom service would be required to market the voice mail or other information service offering. This approval could be obtained through either the opt-out or opt-in method.
3. Services related to the provision or maintenance of Customer Premises Equipment (CPE)
 - As noted in Question 16(2)(c) and (d) above, CPE may be provided by the LEC or CMRS provider itself and may be “necessary to, or used in, the provision of the telecommunications service.” Accordingly, customer approval is not required in order to use CPNI derived from the provision of the telecom service to market the CPE used to provide the service. However, if a division/affiliate or agent of the company provides a service related to the provision or maintenance of the CPE, customer approval would be required.

4. Interconnected VoIP Services

- When the FCC amended its definition of “telecommunications carrier” that it uses solely in the context of its CPNI rules to include interconnected VoIP providers, the FCC did not amend the definition of “telecommunications service.” Accordingly, the total service approach does not apply to interconnected VoIP service providers. However, it does appear that interconnected VoIP service would be considered a communications-related service. In adopting its new rules, the FCC justified its extension of its CPNI rules to VoIP providers because the service is very similar to the communications services provided by traditional analog voice providers. The FCC noted that the “continuing trend toward customer use of [VoIP services] as a replacement for analog services in large measure justifies the extension of our rules to these services to protect consumer privacy.”

21.Q. What type of approval is required to share CPNI with divisions/ affiliates or agents that provide no communications-related services or to market these services?

Only opt-in approval can be used to share CPNI with divisions/affiliates or agents that provide no communications-related services. Accordingly, if a division/affiliate or agent of a telecom company provides a service that does not fall under the four categories of communications-related services listed above, opt-in notice is required before using CPNI derived from the provision of the telecom service to market the non-communications-related service of the division/affiliate or agent.

22.Q. My ILEC affiliated Internet Service Provider (“ISP”) only operates a website and does not provide any communications-related services. Does my ILEC have to use opt-in if it wants to use CPNI derived from the provision of the ILEC service to market the services of the ISP?

If an ILEC has an affiliated Internet Service Provider (ISP) that only operates a website and provides no communications-related services, opt-in approval must be obtained before the ILEC can use its CPNI to market the services of the ISP.

- Please note that because the ISP is not a telecommunications carrier, it is not subject to the FCC’s CPNI rules; however, other privacy rules may apply.
- Also note that if the ISP provides DSL or interconnected VoIP, each of these services would be considered to be a communications-related service and thus the opt-out approach could be used to market either of those services. (If the ISP operates a VoIP

service, under the FCC's new CPNI rules, its VoIP service would be subject to the FCC's CPNI rules.)

23.Q. My ILEC has an affiliated company that provides video service. Does my ILEC have to use opt-in if it wants to use CPNI derived from the provision of the ILEC service to market the video service?

If an ILEC has an affiliated video service provider, opt-in approval must be obtained before the ILEC can use its CPNI to market the services of the video provider or can share its CPNI with the video provider.

Please note that Section 631 of the Act (rather than Section 222) sets forth privacy rules for video/cable providers. Section 631:

- Places certain restrictions on video/cable providers from collecting or disclosing "personally identifiable information" which includes information such as subscriber, name and telephone numbers.
- Requires video operators to provide notice regarding use of personally identifiable information to subscribers at the time of subscription and at least one year thereafter.
- Contains a prohibition against the collection or disclosure of personally identifiable information for marketing purposes unless the video operator obtains prior written or electronic consent from the subscriber. There are no FCC rules prescribing the format or method for obtaining subscribers' consent for use of personally identifiable information. One court has ruled that the opt-out method is acceptable but other courts may rule differently.

24.Q. What method of customer approval must be used for obtaining approval to share CPNI with joint venture partners and independent contractors or to market their services?

Under new rules adopted by the FCC, opt-in approval is required in order for a telecom provider to use CPNI derived from the provision of its telecom service to market the services provided by the carrier's joint venture partner and/or independent contractor or to share CPNI with the joint venture partner/independent contractor. (Previously the rules allowed for either opt-in or opt-out approval if the joint venture partner or independent contractor provided a communications-related service).

25.Q. What method of customer approval must be used to obtain permission to share CPNI with unrelated third parties?

Opt-in approval is required for sharing CPNI with any unrelated third party. The FCC has recognized that disclosures of CPNI to unaffiliated third parties “can have significant privacy consequences and be irreversible.” According to the FCC, the opt-in method protects customers’ CPNI from unapproved disclosure to third parties because it requires carriers to provide prior notice to customers and refrain from disclosing or allowing access to CPNI unless a customer gives his/her express consent by written, oral, or electronic means.

26.Q. Are there any limitations on marketing services to new customers?

An ILEC may market any of its family of services, including one or more of the three categories of telecommunications services and communications-related services provided by its division/affiliate or agents at the time a new customer subscribes to any one of the telecommunications services. In such a situation, unless the customer is a former ILEC or ILEC affiliate customer, the ILEC or ILEC affiliate would not have any individually identifiable CPNI related to the customer.

27.Q. Can an ILEC use new local service subscriptions or new wireless service subscriptions to market long distance services in either of the following manners?

1. During the initial customer call to order installation or activation.

When a new subscriber orders local service from an ILEC or wireless service from an ILEC division/affiliate, CPNI rules do not prohibit the ILEC from attempting to sell long distance or other services during the inward-bound service order call. However, the ILEC must not use any information regarding whom the customer initially selects as their long distance carrier if the long distance carrier is a carrier other than the ILEC’s affiliated long distance carrier.

2. Follow-up by a marketing person based on submission of a referral from a customer service representative (“CSR”) regarding a customer who selects the ILEC affiliate’s long distance provider.

Once an ILEC customer or an ILEC affiliated wireless customer selects the ILEC affiliate’s long distance provider as its long distance provider, there are no limitations respecting referral of the name, number and address of the new customer to marketing or other departments for follow-up regarding calling plans or other ILEC affiliate long distance services.

3. Follow-up by a marketing person based on submission of a referral from a CSR regarding a new ILEC customer or new customer of an ILEC affiliated wireless company who selects a preferred interexchange carrier (PIC) for long distance service other than the ILEC affiliate's long distance provider.

FCC CPNI rules do not prohibit an ILEC from providing the name, number and address of new local service customer, including whether a business or residence line, to the ILEC affiliated long distance marketing group for marketing of ILEC long distance services. However, the ILEC must not use any information regarding whom the customer initially selects as their long distance carrier if a carrier other than ILEC. The same applies in the context of an ILEC affiliated wireless company.

28.Q. Can an ILEC e-mail its opt-out notice to its customers?

An ILEC must obtain express, verifiable, prior approval from consumers to send opt-out notices via e-mail.

29.Q. What kind of CPNI notice is required for new customers?

Depending on the type of CPNI approval needed by the ILEC (*Opt-Out* or *Opt-In*), the ILEC should provide new customers with the appropriate CPNI notification at within a reasonable period of the new subscription. For purposes of this answer, new customers refers to customer who did not subscribe to an ILEC or ILEC affiliate service of any Telecommunications Service Category at the time the service is subscribed.

30.Q. Can an ILEC use knowledge regarding customer subscription to a second line to market dial-up Internet service or DSL.

An ILEC cannot use knowledge gained regarding customer subscription to a second line to market dial-up Internet or DSL unless the ILEC has obtained approval from the customer to use his/her CPNI through either the Opt-Out or Opt-In approval mechanism. However, during an inward-customer contact in which the customer orders a second line, it would be possible for the customer service representative to offer ILEC affiliate dial-up or DSL Internet service. However, absent Opt-Out or Opt-In Approval, once the call is completed the ILEC and affiliates should not use knowledge of the second line to market Dial-up Internet or DSL-based Internet service.

31.Q. In the event an ILEC launches an interconnected VoIP service within its own ILEC service area, can the ILEC use CPNI to market the VoIP provider's services?

An ILEC could use its list of customers' names, addresses and phone numbers to market the VoIP services but could not use any CPNI. Use of CPNI derived from the provision by the ILEC service to customers to identify attractive potential VoIP customers would, absent opt-out or opt-in approval be a violation of the CPNI rules.

32.Q. What is One-Time Use Approval?

An ILEC may obtain limited, *One-Time Use Approval* of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether the ILEC uses *Opt-Out* or *Opt-In Approval* based on the nature of the contact.

- One-Time Use Approval applies both to inbound and outbound customer contacts are limited to seeking CPNI approval only for the duration of the call.
- The FCC cautions carriers to take a conservative approach in deciding which information is necessary for consumers to make informed decisions regarding their CPNI usage.
- *One-Time Use Approval* is based on a streamlined approach to notification. It does not change the *Opt-In* or *Opt-Out* requirements in any way.

QUESTIONS PERTAINING TO SECTION 3

NEW CPNI RULES

Password Requirements

33.Q. Will my company need to create a password for every customer?

No. Only in certain circumstances will carriers need to create and/or obtain and verify a password for customers. When a customer initiates a call to the company to request call detail records, the company must obtain a password in order to share such call detail information over the phone with the customer. Password protection also is required for online account access. However, companies can use one of three (3) alternatives to passwords which include the following: 1.) the carrier may send the requested information to the address of record; 2.) call the customer at the telephone of record; or 3.) the customer may visit the carriers' retail location and present a valid photo ID to obtain their phone call records without having a password. It is very important to keep in mind that password requirements are only applicable to a customer's request for call detail records. Carriers may continue to disclose non-call detail CPNI to a customer upon verification of the customer identity as current rules require.

34.Q. Does the FCC have a procedure for authenticating a customer prior to establishing a customer password?

No. The FCC allows each carrier to establish its own processes to confirm the customer's identity in order to create a password, so long as the carrier does not obtain customer biographical or account information to authenticate the identity of the customer.

35.Q. Do the new password requirements replace my company's existing authentication methods (i.e. - Social Security Number, Mother's Maiden Name)?

If the customer is not requesting call detail information, the company can continue to use existing authentication methods, including SSN and MMN, to validate the identity of the customer. In the context of a customer requesting access to call detail records, however, a company can only release such information to the customer under one of three circumstances: 1.) Customer provides a pre-established password; 2.) Company sends call detail information to the customer's address of record; or 3.) Company may call the customer at the telephone number of record. Likewise, the customer can obtain call detail information in-person at the company's retail business location if they present a valid photo ID that matches the name on the account.

36.Q. What is considered “Call Detail Information”?

The FCC defines Call Detail Information as including “any information that pertains to the transmission of specific telephone calls including, for outbound calls, the number called, and the time, location, or duration of any call and, for inbound calls, the number from which the call was placed, and the time, location, or duration of any call.” See, e.g., *Third Report and Order*, 17 FCC Rcd at 14864, para. 7.

37.Q. What is “biographical” information and why can’t I use this information to confirm the identity of the customer when establishing a password?

Biographical information includes such things as the customer’s social security number, or the last four digits of that number; the customer’s mother’s maiden name; a home address; or a date of birth. The FCC reasoned that data brokers would have the ability to obtain online account information and biographical information easily without the customer’s knowledge and therefore found that the use of such identifiers is would not provide adequate protection against data brokers obtaining unauthorized online access to CPNI.

Although the SSN and MMN is not allowed under the current rules as a method of obtaining call detail information, the FCC will continue to allow the use of such information to “authenticate” customers for non-call detail requests.

38.Q. Our company already has password protection for some or all of our customers. Is there anything else we must do to comply with the new rules concerning password protection?

For accounts that are currently password protected, carriers must create back-up customer authentication methods for lost or forgotten passwords that are not based on readily available biographical or account information. Similarly, carriers must protect online access to CPNI and cannot rely on readily available biographical or account information to validate a customer’s identity. Carriers are not required to reinitialize existing passwords for online accounts.

39.Q. Can our company assist the customer with billing questions without requiring a password?

Yes. The FCC determined that there are some circumstances in which it is acceptable to assist the customer without requiring a password. Specifically, when the customer can provide call detail information to support their on-phone request for assistance (i.e. - the telephone number called, time of call, charges, etc.). However, carriers are only allowed to release call detail information concerning the specific data for which the customer inquires and can provide adequate detail. Additionally, the customer can come to the business office and present a valid photo ID matching the name on the account to obtain assistance.

40.Q. Can passwords be created at the time of new service establishment?

Yes. The FCC recognized that it may be easier for carriers to authenticate a customer at the time of service initiation and therefore allow the establishment of passwords at this time.

41.Q. How should our company authenticate a customer's identity when establishing a password?

The FCC does not dictate how carriers are to authenticate a customer's identity, but require that such authentication not use readily available biographical or account information. In addition to requesting that the customer present a valid photo ID at the carrier's business office, another suggestion offered by the FCC is to use a Personal Identification Number (PIN) method to authenticate the customer. Specifically, the FCC offered the following:

“A PIN authentication method could entail a carrier supplying the customer with a randomly-generated PIN, not based on readily available biographical information, or account information, which the customer would then provide to the carrier prior to establishing a password. Carriers could supply the PIN to the customer by a carrier-originated voicemail or text message to the telephone number of record, or by sending it to an address of record so as to reasonably ensure that it is delivered to the intended party.” *CPNI Order at footnote 57.*

42.Q. If a company places a randomly generated PIN on the customer's bill, does the PIN become part of the account information that cannot be used to authenticate the customer for password establishment?

No. The FCC anticipated that the establishment of a PIN would not be based upon readily available biographical or account information and therefore would be a reasonable means of authentication for password establishment.

Notification of Account Changes

43.Q. Must our company notify customers of any changes to their account?

No. The FCC's most recent Order specifies that customers must be immediately notified of “certain” account changes, which include: 1.) a change or creation of passwords; 2.) a change in the response to the back-up authentication question (in a case where the customer lost or forgot his password); 3.) a change to the online account; or 4.) a change to the address of record.

44.Q. Can the company tell the customer what account information has been changed? For example, can the company tell the customer that their address has changed, but not indicate what it has changed to?

No. In an effort to protect the security of the potential victim of pretexting, the FCC made clear that the notification must not reveal the changed account information.

45.Q. When a customer disconnects service, and leaves a new forwarding address in order to receive their last bill does the company need to provide notification of the change of address?

Although the FCC did not address this specific matter in the context of its new rules, presuming that the company has properly authenticated the identity of the customer prior to accepting the request to disconnect service, such notification is not required. If however, the company wishes to send a notice to the customer to confirm the disconnection of service, such action would be advisable. On a related matter, the FCC indicated that notification is not required when the customer initiates service, including the selection of a password at service initiation. The presumption is that the company has properly authenticated the identity of the customer prior to establishing service. This same reasoning can be applied to the disconnection of service.

46.Q. How can account change notification be completed? Can the company use e-mail in lieu of standard mail?

The FCC's Order states specifically that the customer may be notified "through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record, as to reasonably ensure that the customer receives the notification." No reference is made to e-mail although in a footnote the FCC recognizes that there is no "one-size-fits-all" requirement for making the notification and in the same paragraph, the FCC states that the notification requirement also applies to a change in an online account (for which e-mail notification would be the most appropriate way of notifying). Accordingly, a "conservative" interpretation would be that e-mail is not allowed because it is not explicitly permitted in the Order. A more "liberal" interpretation would be that it would be allowed because its use is inferred.

Unauthorized Disclosure of CPNI

47.Q. What constitutes a "breach" of CPNI?

A "breach" has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.

48.Q. How quickly must my company notify law enforcement of a breach in a customer's CPNI?

Carriers must notify law enforcement no later than seven business days after a determination of a breach by sending notification electronically to the U.S. Secret Service and the Federal Bureau of Investigation (FBI). The FCC will establish a link at <http://www.fcc.gov/eb/cpni> that will communicate to both agencies.

49.Q. Is the customer and law enforcement to be notified at the same time of a suspected breach in the customer's CPNI?

No. Companies must wait seven days after notifying law enforcement before notifying the customer of the breach, if law enforcement has not requested that the company continue to postpone disclosure of the breach.

50.Q. To which law enforcement agencies does my company report CPNI breaches?

U.S. Secret Service (USSS) and the Federal Bureau of Investigation (FBI). Please see answers to Questions 56-58 below concerning method of notification to the USSS, FBI and customers and recordkeeping requirements.

Joint Venture and Independent Contractor Use of CPNI

51.Q. Can my company continue to use the *Opt-Out Approval* method in order to share CPNI with Joint Venture and/or Independent Contractors?

No. The FCC's new rules require the use of *Opt-In Approval* from a customer before disclosing CPNI to a joint venture or independent contractor.

52.Q. Can my company continue to share CPNI with our billing vendor without obtaining *Opt-In Approval* from the customer?

Yes. The FCC made clear that the Opt-In regime does not affect a carrier's ability to use CPNI as allowed for under Section 222(d) of the Act, which in part allows carriers to "initiate, render, bill and collect for telecommunications services."

53.Q. Does the change in FCC rules requiring opt-in approval for joint venture and independent contractors affect rules pertaining to marketing CPNI to my company's agents or affiliates?

No. CPNI rules continue to allow for the use of *Opt-In* or *Opt-Out Approval* to disclose the customer's CPNI to its agents or affiliates.

QUESTIONS THAT PERTAIN TO SECTION 4

Notification and Safeguard Requirements

that Apply to all Carriers

Notification of Account Changes

54.Q. When are carriers required to notify customers of account changes?

As described in section 3(III) in this manual, under the FCC's new CPNI rules, when a change is made to a customer account, the carrier is required to notify the customer of such change. These changes include:

- a change to the customer's password
- a change to the customer response to the back-up authentication question for lost or forgotten passwords
- a change to an online account
- the creation or change to an address of record

The notification is not required when the customer initiates service, including the selection of a password at service initiation. The notification must not disclose what account information has changed and is not to be sent to the destination of the new account information.

55.Q. How can carriers notify customers of account changes?

The notification can be provided to the customer by mail (to the address of record), by voicemail or text message to the telephone number of record.

- "Address of record," whether postal or electronic, is an address that the carrier has associated with the customer's account for at least 30 days.
- "Telephone number of record" is the telephone number associated with the underlying service, not the telephone number supplied as a customer's "contact information."

Notification of CPNI Security Breaches

56.Q. What are the procedures for notifying law enforcement of a breach of a customer's CPNI and where does the company file federal reports of a breach in a customer's CPNI?

A carrier shall notify law enforcement of a breach of its customers' CPNI as described below. The carrier shall not notify its customers or disclose the breach publicly, whether voluntarily or under state or local law or these rules, until it has completed the process of notifying law enforcement. As used in this section, a

“breach” has occurred when a person, without authorization or exceeding authorization, has intentionally gained access to, used, or disclosed CPNI.

As soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach, the carrier shall electronically notify the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI) through a central reporting facility. The Commission will maintain a link to the reporting facility at <http://www.fcc.gov/eb/cpni>.

- (a) Notwithstanding any state law to the contrary, the carrier shall not notify customers or disclose the breach to the public until 7 full business days have passed after notification to the USSS and the FBI except as provided in the following sections (b) and (c).
- (b) If the carrier believes that there is an extraordinarily urgent need to notify any class of affected customers sooner than otherwise allowed under paragraph (a), in order to avoid immediate and irreparable harm, it shall so indicate in its notification and may proceed to immediately notify its affected customers only after consultation with the relevant investigating agency. The carrier shall cooperate with the relevant investigating agency’s request to minimize any adverse effects of such customer notification.
- (c) If the relevant investigating agency determines that public disclosure or notice to customers would impede or compromise an ongoing or potential criminal investigation or national security, such agency may direct the carrier not to so disclose or notify for an initial period of up to 30 days. Such period may be extended by the agency as reasonably necessary in the judgment of the agency. If such direction is given, the agency shall notify the carrier when it appears that public disclosure or notice to affected customers will no longer impede or compromise a criminal investigation or national security. The agency shall provide in writing its initial direction to the carrier, any subsequent extension, and any notification that notice will no longer impede or compromise a criminal investigation or national security and such writings shall be contemporaneously logged on the same reporting facility that contains records of notifications filed by carriers.

57.Q. When should a customer be notified that a breach in his/her CPNI has occurred?

Only after a carrier has completed the process of notifying law enforcement pursuant to Question 56 above, it shall notify its customers of a breach of his/her CPNI.

58.Q. What are the recordkeeping requirements for breaches that occur?

All carriers shall maintain a record, electronically or in some other manner, of any breaches discovered, notifications made to the USSS and the FBI pursuant to Question 56 above, and notifications made to customers. The record must include, if available, dates of discovery and notification, a detailed description of the CPNI that was the subject of the breach, and the circumstances of the breach. Carriers shall retain the record for a minimum of 2 years.

Safeguard Requirements

59.Q. What are the safeguard requirements that apply to all carriers?

1. Telecom carriers must train their personnel as to when they are and are not authorized to use CPNI.
2. Carriers must have an express disciplinary process in place.
3. Carriers must keep a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI.
4. Carriers must file an annual CPNI certification on March 1st of each year.
5. Safeguard disclosure requirements on disclosure of CPNI.

CPNI Annual Certification

60.Q. What must be contained in the annual CPNI certification?

By March 1st of each year, telecom carriers must have an officer, as an agent of the carrier, sign a CPNI compliance certificate and file it with the FCC. The filing requirement is part of the FCC's new rules. (Previously, the FCC required carriers to execute the certificate and maintain it in a publicly available file).

- The certificate must state that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the FCC's CPNI rules.
- The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the FCC's CPNI rules.
- Under the FCC's new rules, the FCC requires carriers to include with the certification and statement an explanation of any actions

taken against data brokers and a summary of all customer complaints received in the past year concerning the unauthorized release of CPNI.

- By “actions,” the FCC means that carriers should report on proceedings instituted or petitions filed by a carrier at either state commissions, the court system, or at the Commission against data brokers.
- The summary of customer complaints should include a report on the number of customer complaints a carrier has received related to unauthorized access to CPNI, or unauthorized disclosure of CPNI, broken down by category of complaint (for example, instances of improper access by employees, instances of improper disclosure to individuals not authorized to receive the information, or instances of improper access to online information by individuals not authorized to view the information). Additionally, carriers must report on any information that they have with respect to the processes pretexters are using to attempt to access CPNI, and what steps carriers are taking to protect CPNI.

61.Q. How long must the company retain the annual CPNI certification?

Because there are recent cases where the FCC has penalized companies for not retaining these certifications, we advise that retention be at least 5 years.

62.Q. If a telecom services provider operates under a single name but through multiple affiliated legal entities, does each affiliate have to have its own CPNI policies and procedures and its own annual CPNI Self-Certification?

Affiliates operating under a single name or names closely associated by subscribers as being part of a single family of companies do not have to have separate CPNI policies and procedures or separate annual self-certifications of compliance. However, all policies and procedures and certifications must clearly indicate the affiliates covered.

Safeguard Requirements regarding the Disclosure of CPNI

63.Q. What are the general safeguard requirements that apply regarding the disclosure of CPNI?

1. Carriers must take reasonable measures to discover and protect against attempts to gain unauthorized access to CPNI.

2. Carriers must properly authenticate a customer prior to disclosing CPNI based on customer-initiated telephone contact, online account access, or an in-store visit

64.Q. What are JSI's recommendations regarding how carriers can comply with the requirements that apply when discussing call detail information over the telephone with customers?

When the FCC established the new rules, it provided alternatives to the use of passwords to minimize the impact to existing carrier-customer relations. As such, JSI recommended that passwords be used only as a last resort. This can be done by taking the following steps:

- Because passwords are not required to obtain non-call-detail CPNI, when a customer calls with a billing question and is able to provide the call detail information, such as the telephone number called and time of call, to support the request, the company's customer service representative (CSR) can assist the customer with his/her question.
- If a customer calls with a billing question and is not able to provide call detail information, the CSR can provide the customer with three alternatives before considering the creation of a password:
 - The simplest alternative is for the CSR to call the customer back using the contact telephone number that the company has in its records. The FCC found that "there is not the same need for authentication when the carrier initiates contact with a customer *via* the telephone number of record."
 - A second alternative is for the CSR to send a copy of the bill to the address that the company has in its records. When the customer receives the copy of the bill, he/she would call the CSR and could then discuss the billing question as described under #1 above.
 - The CSR can also provide the customer with a third alternative, visiting the company's retail location. The FCC's new rules continue to allow a customer to discuss billing questions and other matters related to the customer's CPNI when he/she visits a telephone company's retail location and presents a valid photo ID matching the name on the account.
- As an alternative to the above, companies can establish a password for the customer to access billing information when he/she calls in with a billing question. Establishing a password for new customers can be done at the time of service commencement; for existing customers, carriers may establish their own processes to confirm a customer's identity to create a password, but may not obtain customer biographical or account information to authenticate the identity.

65.Q. What are the requirements that pertain to the establishment of passwords?

1. To establish a password, a carrier must authenticate the customer without the use of readily available biographical information, or account information.
 - “Readily available biographical information” is information drawn from the customer’s life history and includes such things as the customer’s social security number, or the last four digits of that number; mother’s maiden name; home address; or date of birth.
2. Carriers may create a back-up customer authentication method in the event of a lost or forgotten password, but such back-up customer authentication method may not prompt the customer for readily available biographical information, or account information.
3. If a customer cannot provide the correct password or the correct response for the back-up customer authentication method, the customer must establish a new password.

66.Q. What are the requirements that pertain to online access to CPNI?

1. A carrier must authenticate a customer without the use of readily available biographical information, or account information, prior to allowing the customer online access to CPNI related to a telecom service account.
2. Once authenticated, the customer may only obtain online access to CPNI related to a telecom service account through a password, as described in Question 65 above, that is not prompted by the carrier asking for readily available biographical information, or account information.

67.Q. How can a customer discuss billing questions when he/she comes to the telephone company’s retail location?

A carrier may disclose call detail information and any information related to the customer’s CPNI to a customer who, at a carrier’s retail location, first presents to the carrier or its agent a valid photo ID matching the customer’s account information.

68.Q. Are there any notification requirements regarding changes in passwords?

As explained under Questions 54 & 55 above, carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed.

This notification is not required when the customer initiates service, including the selection of a password at service initiation and may be through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record. The notification must not reveal the changed information or be sent to the new account information.

69.Q. Are there any exceptions for business customers?

Carriers may bind themselves contractually to authentication regimes other than those described in this section for services they provide to their business customers that have both a dedicated account representative and a contract that specifically addresses the carriers' protection of CPNI.

QUESTIONS PERTAINING TO SECTION 5
Notice and Safeguard Requirements For Carriers that use CPNI
for Marketing Purposes When Customer Approval is
Required

Notice Requirements

70.Q What must notices for opt-out and opt-in approval contain?

General requirements common to opt-out and opt-in

Opt-out and opt-in approval notices must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI. (sample opt-out and opt-in letters can be found in Section 5(III)).

1. Prior to any solicitation for customer approval, a telecom carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.
2. A telecom carrier must maintain records of notification, whether oral, written or electronic, for at least one year.
3. Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

Content requirements common to opt-out and opt-in

1. The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.
2. The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.
3. The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

4. The notification must be comprehensible and must not be misleading.
5. If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.
6. If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.
7. A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.
8. A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.
9. The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.
10. A telecom carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

71.Q. What additional notice requirements apply to opt-out approval notices?

Carriers using the opt-out method must provide notices to customers every two years. Notification may be made by electronic or written methods, but not by oral communication. If the company sends the notice by e-mail, it must:

- obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;
- allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;
- send all opt-out e-mail notices that are returned to the carrier as undeliverable to the customer in another form before carriers may consider the customer to have received notice;

- ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and
- make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

72.Q. What are some examples of how carriers can obtain responses to opt-out notices?

- postage-paid return postcard
- a toll free number
- a secure Internet page, and/or an e-mail address to receive opt-outs
- a form or other mechanism that could be returned with a customer's bill payment

73.Q. After sending the customer an opt-out notice, how long must a carrier allow the customer to respond before assuming that the customer has given approval under the opt-out approval method?

Carriers must provide the customer with 30 days after he/she has received adequate written or electronic notification. A carrier may, in its discretion, provide for a longer period.

- In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent
- In the case of notification by mail, allow 3 days so total of 33 days. Example: Day 1 through 33 – if customer opts out, do not use CPNI for marketing. Day 34 forward – if no opt-out communication from customer, authorization assumed excluding use for marketing non-communications services or providing CPNI to third parties.

Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

74.Q. How long does opt-out approval last?

Opt-out approval is good only for a maximum of two years, after which time the carrier must send out a new CPNI opt-out notice to the customer.

75.Q. How can the customer notify the carrier that the customer is electing to terminate opt-out approval?

A carrier must allow customers to terminate the opt-out approval at any time beyond the 30-day period. An ILEC must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. An ILEC may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose. Some examples are provided under Question 72 above.

76.Q. What additional notice requirements are there for notification for soliciting opt-in approval?

- (1) A telecom carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. If oral, telecom carrier
 - bears the burden of demonstrating that such approval has been given in compliance with the FCC's Rules;
 - must have a reasonable basis of recording oral approval – record information, party, date, time, outbound or inbound call;
 - before obtaining oral approval, must explain CPNI rights and uses.
- (2) A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

77.Q. How long does opt-in approval last?

Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecom carrier must remain in effect until the customer revokes or limits such approval or disapproval.

78.Q. What are the notice requirements specific to streamlined consent for one-time use of CPNI?

Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

The contents of any such notification must comply with the content requirements set forth under Question 70 above except that carriers may omit any of the following notice provisions if not relevant to the limited use for which the carrier seeks CPNI:

- Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;
- Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;
- Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and

Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

Safeguard Requirements

79.Q. What are the safeguard requirements that apply if customer approval is required?

Carriers must:

1. Implement a system by which the status of a customer's CPNI can be clearly established prior to the use of CPNI;
2. Maintain a record of the campaigns;
3. Establish a supervisory review process; and
4. Comply with specific reporting requirements if they are using the opt-out approval method.

80.Q. My company is using the opt-out approach. How should my company implement a system for ensuring that the status of a customer's CPNI can be clearly established prior to the use of CPNI?

To implement a system for determining the status of a customer's CPNI when the company uses the opt-out method, we recommend the following:

1. Prior to beginning the first marketing campaign, make a master list of all current and former customers to whom notice is being sent.
2. Indicate on the list the date the notice was sent to each customer.
3. During the 30 day waiting period (or 33 day period if notice is mailed), indicate whether or not response was received.

- If a response was received, make sure that the list clearly indicates that the customer does not want his/her CPNI used for marketing purposes and update the customer's records to indicate that CPNI is not to be used for marketing purposes.
 - If no response was received, indicate that on the list.
4. Ensure that all sales and marketing personnel and any others that will be using CPNI for marketing purposes checks this list first before using the CPNI.
 5. If a customer contacts you to change his/her status, make sure that the status is changed on the master list, appropriate customer service records are updated and inform all sales staff, marketing personnel or others that may be using CPNI for marketing campaigns.
 6. Every two years after sending the first notice, opt-out notices must be sent and notices must be sent with each new marketing campaign that would include new customers that were not on the initial list. Prior to sending these notices, update the master list to reflect any new customers to whom the notice will be sent and any former customers to whom the notice will not be sent. Then follow the same process that is outlined above when the first notice was sent.

81.Q. My company is using the opt-in approach. How should my company implement a system for ensuring that the status of a customer's CPNI can be clearly established prior to the use of CPNI?

To implement a system for determining the status of a customer's CPNI when the company uses the opt-in method, we recommend the following:

1. Prior to beginning the first marketing campaign, make a master list of all current and former customers to whom notice is being sent.
2. Indicate on the list the date the notice was sent to each customer.
3. Indicate whether or not response was received.
 - If no response is received, make sure that the list clearly indicates that the customer does not want his/her CPNI used for marketing purposes and update the customer's records to indicate that CPNI is not to be used for marketing purposes.
 - If a response was received, indicate that on the list.

4. Ensure that all sales and marketing personnel and any others that will be using CPNI for marketing purposes checks this list first before using the CPNI.
5. If a customer contacts you to change his/her status, make sure that the status is changed on the master list, appropriate customer service records are updated and inform all sales staff, marketing personnel or others that may be using CPNI for marketing campaigns.
6. Notices must be sent with each new marketing campaign that would include new customers that were not on the initial list. Prior to sending these notices, update the master list to reflect any new customers to whom the notice will be sent and any former customers to whom the notice will not be sent. Then follow the same process that is outlined above when the first notice was sent.

82.Q. What does my company need to do in order to comply with the requirement to maintain a record of the marketing campaigns?

In addition to implementing the system described in the two questions above, carriers must maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI and keep a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI.

- The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as part of the campaign;
- The record must be retained for a minimum of one year.

We recommend that this recordkeeping requirement be fulfilled by keeping a log which lists the marketing campaigns which are conducted by the company and its affiliates in which CPNI is used. The log should list and describe each marketing campaign including the specific type of CPNI that was used and what products and services were offered. The log should also include a place where instances where CPNI was disclosed to third parties or where third parties were allowed to access CPNI is listed (please note that this recordkeeping requirement is also listed under Question 59 as a requirement for all carriers). The log must be kept for at least a year and can be kept electronically.

83.Q. How should a company implement a supervisory review process?

FCC CPNI rules require telecom carriers to establish a supervisory review process regarding carrier compliance with the rules for outbound marketing situations and maintain records of carrier compliance for a minimum period of

one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

We recommend that in order to fulfill this requirement, prior to conducting the first marketing campaign in which CPNI will be used, a management level staff person be appointed as supervisor of the process. The supervisor should establish procedures by which sales staff must obtain approval of any proposed outbound marketing campaigns in which customer approval (opt-out or opt-in) would be sought. The supervisor would also be responsible for ensuring that the notices and the way they are sent and handled comply with FCC rules and that the appropriate lists and logs are maintained as described above in Questions 80-82. Additionally, the supervisor would monitor the campaigns and keep records of how campaigns are conducted. These records would be kept for a minimum of one year.

84.Q. What are the reporting requirements that are specific to the use of the opt-out method?

FCC rules require carriers that use the opt-out method to provide written notice within five business days to the FCC of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly. The notice must be submitted even if the carrier offers other methods by which customers may opt-out. The notice must be in the form of a letter and include:

- the carrier's name
- a description of the opt-out mechanism(s) used
- the problem(s) experienced
- the remedy proposed
- when it will be/was implemented
- whether the relevant state commission(s) has been notified
- whether the company has taken any action
- whether a copy of the notice has been provided to customers
- contact information.

APPENDIX 1

SECTION 222 OF THE ACT AND FCC RULES - PART 64, SUBPART U

**SECTION 222 OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED
47 U.S.C. § 222**

Section 222 [47 USC Section 222]. Privacy of Customer Information

(a) In General.--Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

(b) Confidentiality of Carrier Information.--A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

(c) Confidentiality of Customer Proprietary Network Information.—

(1) Privacy requirements for telecommunications carriers.--Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

(2) Disclosure on request by customers.--A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

(3) Aggregate customer information.--A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefore.

(d) Exceptions.--Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

(1) to initiate, render, bill, and collect for telecommunications services;

(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services;

(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

(4) to provide call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d))—

(A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the user's call for emergency services;

(B) to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or

(C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(e) Subscriber List Information.--Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(f) **AUTHORITY TO USE WIRELESS LOCATION INFORMATION.** - For purposes of subsection (c)(1), without the express prior authorization of the customer, a customer shall not be considered to have approved the use or disclosure of or access to—

(1) call location information concerning the user of a commercial mobile service (as such term is defined in section 332(d)), other than in accordance with subsection (d)(4); or

(2) automatic crash notification information to any person other than for use in the operation of an automatic crash notification system.

(g) SUBSCRIBER LISTED AND UNLISTED INFORMATION FOR EMERGENCY SERVICES. - Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide information described in subsection (i)(3)(A) (including information pertaining to subscribers whose information is unlisted or unpublished) that is in its possession or control (including information pertaining to subscribers of other carriers) on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions to providers of emergency services, and providers of emergency support services, solely for purposes of delivering or assisting in the delivery of emergency services.

(h) Definitions.--As used in this section:

(1) Customer proprietary network information.--The term "customer proprietary network information" means—

(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

(2) Aggregate information.--The term "aggregate customer information" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(3) Subscriber list information.--The term "subscriber list information" means any information—

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) PUBLIC SAFETY ANSWERING POINT. - The term "public safety answering point" means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) EMERGENCY SERVICES. - The term “emergency services” means 9-1-1 emergency services and emergency notification services.

(6) EMERGENCY NOTIFICATION SERVICES. - The term “emergency notification services” means services that notify the public of an emergency.

(7) EMERGENCY SUPPORT SERVICES. - The term “emergency support services” means information or data base management services used in support of emergency services.

EXISTING FCC RULES GOVERNING THE USE OF CPNI
PART 64 - SUBPART U - Customer
Proprietary Network Information
47 C.F.R. § 64.2001-64.2009

§64.2001 Basis and purpose.

(a) Basis. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of the rules in this subpart is to implement Section 222 of the Communications Act of 1934, as amended, 47 USC §222.

§64.2003 Definitions.

Terms used in this subpart have the following meanings:

(a) Affiliate. The term “affiliate” has the same meaning given such term in Section 3(1) of the Communications Act of 1934, as amended, 47 USC 153(1).

(b) Communications-related services. The term “communications-related services” means telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment.

(c) Customer. A customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service.

(d) Customer proprietary network information (CPNI). The term “customer proprietary network information (CPNI)” has the same meaning given to such term in Section 222(h)(1) of the Communications Act of 1934, as amended, 47 USC 222(h)(1).

(e) Customer premises equipment (CPE). The term “customer premises equipment (CPE)” has the same meaning given to such term in Section 3(14) of the Communications Act of 1934, as amended, 47 USC 153(14).

(f) Information services typically provided by telecommunications carriers. The phrase “information services typically provided by telecommunications carriers” means only those information services (as defined in Section 3(20) of the Communications Act of 1934, as amended, 47 USC 153(2)) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. Such phrase “information services typically provided by telecommunications carriers,” as used in this subpart, shall not include retail consumer services provided using Internet websites (such as travel reservation

services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(g) Local exchange carrier (LEC). The term “local exchange carrier (LEC)” has the same meaning given to such term in Section 3(26) of the Communications Act of 1934, as amended, 47 USC 153(26).

(h) Opt-in approval. The term “opt-in approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier's request consistent with the requirements set forth in this subpart.

(i) Opt-out approval. The term “opt-out approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer's CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer's CPNI if the customer has failed to object thereto within the waiting period described in §64.2009(d)(1) after the customer is provided appropriate notification of the carrier's request for consent consistent with the rules in this subpart.

(j) Subscriber list information (SLI). The term “subscriber list information (SLI)” has the same meaning given to such term in Section 222(h)(3) of the Communications Act of 1934, as amended, 47 USC 222(h)(3).

(k) Telecommunications carrier or carrier. The terms “telecommunications carrier” or “carrier” shall have the same meaning as set forth in Section 3(44) of the Communications Act of 1934, as amended, 47 USC 153(44).

(l) Telecommunications service. The term “telecommunications service” has the same meaning given to such term in Section 3(46) of the Communications Act of 1934, as amended, 47 USC 153(46).

§64.2005 Use of customer proprietary network information without customer approval.

(a) Any telecommunications carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of service (i.e., local, interexchange, and CMRS) to which the customer already subscribes from the same carrier, without customer approval.

(1) If a customer subscribes to more than one category of service offered by the carrier, the carrier is permitted to share CPNI among the carrier's affiliated entities that provide a service offering to the customer.

(2) If a telecommunications carrier provides different categories of service, but a customer does not subscribe to more than one offering by the carrier, the carrier is not permitted to share CPNI with its affiliates, except as provided in §64.2007(b).

(b) A telecommunications carrier may not use, disclose, or permit access to CPNI to market to a customer service offerings that are within a category of service to which the subscriber does not already subscribe from that carrier, unless that carrier has customer approval to do so, except as described in paragraph (c) of this section.

(1) A wireless provider may use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s). A wireline carrier may use, disclose or permit access to CPNI derived from its provision of local exchange service or interexchange service, without customer approval, for the provision of CPE and call answering, voice mail or messaging, voice storage and retrieval services, fax store and forward, and protocol conversion.

(2) A telecommunications carrier may not use, disclose or permit access to CPNI to identify or track customers that call competing service providers. For example, a local exchange carrier may not use local service CPNI to track all customers that call local service competitors.

(c) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, as described in this paragraph (c).

(1) A telecommunications carrier may use, disclose, or permit access to CPNI, without customer approval, in its provision of inside wiring installation, maintenance, and repair services.

(2) CMRS providers may use, disclose, or permit access to CPNI for the purpose of conducting research on the health effects of CMRS.

(3) LECs and CMRS providers may use CPNI, without customer approval, to market services formerly known as adjunct-to-basic services, such as, but not limited to, speed dialing, computer-provided directory assistance, call monitoring, call tracing, call blocking, call return, repeat dialing, call tracking, call waiting, caller I.D., call forwarding, and certain centrex features.

(d) A telecommunications carrier may use, disclose, or permit access to CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

§64.2007 Approval required for use of customer proprietary network information.

(a) A telecommunications carrier may obtain approval through written, oral or electronic methods.

(1) A telecommunications carrier relying on oral approval shall bear the burden of demonstrating that such approval has been given in compliance with the Commission's rules in this part.

(2) Approval or disapproval to use, disclose, or permit access to a customer's CPNI obtained by a telecommunications carrier must remain in effect until the customer revokes or limits such approval or disapproval.

(3) A telecommunications carrier must maintain records of approval, whether oral, written or electronic, for at least one year.

(b) Use of Opt-Out and Opt-In Approval Processes.

(1) A telecommunications carrier may, subject to opt-out approval or opt-in approval, use its customer's individually identifiable CPNI for the purpose of marketing communications-related services to that customer. A telecommunications carrier may, subject to opt-out approval or opt-in approval, disclose its customer's individually identifiable CPNI, for the purpose of marketing communications-related services to that customer, to its agents; its affiliates that provide communications-related services; and its joint venture partners and independent contractors. A telecommunications carrier may also permit such persons or entities to obtain access to such CPNI for such purposes. Any such disclosure to or access provided to joint venture partners and independent contractors shall be subject to the safeguards set forth in paragraph (b)(2) of this section.

(2) Joint Venture/Contractor Safeguards. A telecommunications carrier that discloses or provides access to CPNI to its joint venture partners or independent contractors shall enter into confidentiality agreements with independent contractors or joint venture partners that comply with the following requirements.

The confidentiality agreement shall:

- (i) Require that the independent contractor or joint venture partner use the CPNI only for the purpose of marketing or providing the communications-related services for which that CPNI has been provided;
- (ii) Disallow the independent contractor or joint venture partner from using, allowing access to, or disclosing the CPNI to any other

party, unless required to make such disclosure under force of law;
and

(iii) Require that the independent contractor or joint venture partner have appropriate protections in place to ensure the ongoing confidentiality of consumers' CPNI.

(3) Except for use and disclosure of CPNI that is permitted without customer approval under §64.2005, or that is described in paragraph (b)(1) of this section, or as otherwise provided in Section 222 of the Communications Act of 1934, as amended, a telecommunications carrier may only use, disclose, or permit access to its customer's individually identifiable CPNI subject to opt-in approval.

§64.2008 Notice required for use of customer proprietary network information.

(a) Notification, Generally.

(1) Prior to any solicitation for customer approval, a telecommunications carrier must provide notification to the customer of the customer's right to restrict use of, disclosure of, and access to that customer's CPNI.

(2) A telecommunications carrier must maintain records of notification, whether oral, written or electronic, for at least one year.

(b) Individual notice to customers must be provided when soliciting approval to use, disclose, or permit access to customers' CPNI.

(c) Content of Notice. Customer notification must provide sufficient information to enable the customer to make an informed decision as to whether to permit a carrier to use, disclose, or permit access to, the customer's CPNI.

(1) The notification must state that the customer has a right, and the carrier has a duty, under federal law, to protect the confidentiality of CPNI.

(2) The notification must specify the types of information that constitute CPNI and the specific entities that will receive the CPNI, describe the purposes for which CPNI will be used, and inform the customer of his or her right to disapprove those uses, and deny or withdraw access to CPNI at any time.

(3) The notification must advise the customer of the precise steps the customer must take in order to grant or deny access to CPNI, and must clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes. However, carriers may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to CPNI.

- (4) The notification must be comprehensible and must not be misleading.
- (5) If written notification is provided, the notice must be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to a customer.
- (6) If any portion of a notification is translated into another language, then all portions of the notification must be translated into that language.
- (7) A carrier may state in the notification that the customer's approval to use CPNI may enhance the carrier's ability to offer products and services tailored to the customer's needs. A carrier also may state in the notification that it may be compelled to disclose CPNI to any person upon affirmative written request by the customer.
- (8) A carrier may not include in the notification any statement attempting to encourage a customer to freeze third-party access to CPNI.
- (9) The notification must state that any approval, or denial of approval for the use of CPNI outside of the service to which the customer already subscribes from that carrier is valid until the customer affirmatively revokes or limits such approval or denial.
- (10) A telecommunications carrier's solicitation for approval must be proximate to the notification of a customer's CPNI rights.

(d) Notice Requirements Specific to Opt-Out. A telecommunications carrier must provide notification to obtain opt-out approval through electronic or written methods, but not by oral communication (except as provided in paragraph (f) of this section). The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(1) Carriers must wait a 30-day minimum period of time after giving customers notice and an opportunity to opt-out before assuming customer approval to use, disclose, or permit access to CPNI. A carrier may, in its discretion, provide for a longer period. Carriers must notify customers as to the applicable waiting period for a response before approval is assumed.

(i) In the case of an electronic form of notification, the waiting period shall begin to run from the date on which the notification was sent; and

(ii) In the case of notification by mail, the waiting period shall begin to run on the third day following the date that the notification was mailed.

(2) Carriers using the opt-out mechanism must provide notices to their customers every two years.

(3) Telecommunications carriers that use e-mail to provide opt-out notices must comply with the following requirements in addition to the requirements generally applicable to notification:

(i) Carriers must obtain express, verifiable, prior approval from consumers to send notices via e-mail regarding their service in general, or CPNI in particular;

(ii) Carriers must allow customers to reply directly to e-mails containing CPNI notices in order to opt-out;

(iii) Opt-out e-mail notices that are returned to the carrier as undeliverable must be sent to the customer in another form before carriers may consider the customer to have received notice;

(iv) Carriers that use e-mail to send CPNI notices must ensure that the subject line of the message clearly and accurately identifies the subject matter of the e-mail; and

(v) Telecommunications carriers must make available to every customer a method to opt-out that is of no additional cost to the customer and that is available 24 hours a day, seven days a week. Carriers may satisfy this requirement through a combination of methods, so long as all customers have the ability to opt-out at no cost and are able to effectuate that choice whenever they choose.

(e) Notice Requirements Specific to Opt-In. A telecommunications carrier may provide notification to obtain opt-in approval through oral, written, or electronic methods. The contents of any such notification must comply with the requirements of paragraph (c) of this section.

(f) Notice Requirements Specific to One-Time Use of CPNI.

(1) Carriers may use oral notice to obtain limited, one-time use of CPNI for inbound and outbound customer telephone contacts for the duration of the call, regardless of whether carriers use opt-out or opt-in approval based on the nature of the contact.

(2) The contents of any such notification must comply with the requirements of paragraph (c) of this section, except that telecommunications carriers may omit any of the following notice

provisions if not relevant to the limited use for which the carrier seeks CPNI:

- (i) Carriers need not advise customers that if they have opted-out previously, no action is needed to maintain the opt-out election;
- (ii) Carriers need not advise customers that they may share CPNI with their affiliates or third parties and need not name those entities, if the limited CPNI usage will not result in use by, or disclosure to, an affiliate or third party;
- (iii) Carriers need not disclose the means by which a customer can deny or withdraw future access to CPNI, so long as carriers explain to customers that the scope of the approval the carrier seeks is limited to one-time use; and
- (iv) Carriers may omit disclosure of the precise steps a customer must take in order to grant or deny access to CPNI, as long as the carrier clearly communicates that the customer can deny access to his CPNI for the call.

§64.2009 Safeguards required for use of customer proprietary network information.

- (a) Telecommunications carriers must implement a system by which the status of a customer's CPNI approval can be clearly established prior to the use of CPNI.
- (b) Telecommunications carriers must train their personnel as to when they are and are not authorized to use CPNI, and carriers must have an express disciplinary process in place.
- (c) All carriers shall maintain a record, electronically or in some other manner, of their own and their affiliates' sales and marketing campaigns that use their customers' CPNI. All carriers shall maintain a record of all instances where CPNI was disclosed or provided to third parties, or where third parties were allowed access to CPNI. The record must include a description of each campaign, the specific CPNI that was used in the campaign, and what products and services were offered as a part of the campaign. Carriers shall retain the record for a minimum of one year.
- (d) Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in this subpart for outbound marketing situations and maintain records of carrier compliance for a minimum period of one year. Specifically, sales personnel must obtain supervisory approval of any proposed outbound marketing request for customer approval.

(e) A telecommunications carrier must have an officer, as an agent of the carrier, sign a compliance certificate on an annual basis stating that the officer has personal knowledge that the company has established operating procedures that are adequate to ensure compliance with the rules in this subpart. The carrier must provide a statement accompanying the certificate explaining how its operating procedures ensure that it is or is not in compliance with the rules in this subpart.

(f) Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly.

(1) The notice shall be in the form of a letter, and shall include the carrier's name, a description of the opt-out mechanism(s) used, the problem(s) experienced, the remedy proposed and when it will be/was implemented, whether the relevant state commission(s) has been notified and whether it has taken any action, a copy of the notice provided to customers, and contact information.

(2) Such notice must be submitted even if the carrier offers other methods by which consumers may opt-out.

NEW FCC RULES GOVERNING THE USE OF CPNI
PART 64 - SUBPART U - Customer
Proprietary Network Information
47 C.F.R. § 64.2001-64.2011

(Effective Date Yet to Be Announced)

APPENDIX 2

TABLE OF FCC ORDERS

CPNI Order

Implementation of the Telecommunications Act of 1986: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934 as Amended, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 13 FCC Rcd 8061 (rel. Feb. 26, 1998)

First CPNI Clarification Order

Implementation of the Telecommunications Act of 1986: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Order, 13 FCC Rcd 12390 (1998) DA 98-971 (rel. May 21, 1998)

Electronic Safeguards Order

Implementation of the Telecommunications Act of 1986: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Order, FCC 98-239 (rel. Sept. 24, 1998)

CPNI Reconsideration Order

Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information; CC Docket No. 96-115, and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, Order on Reconsideration and Petitions for Forbearance, 14 FCC Rcd 14409 (1999), FCC 99-223 (Rel. Sept. 3, 1999)

Second CPNI Clarification Order and CPNI Second Further NPRM

Implementation of the Telecommunications Act of 1996: Telecommunications Carrier's Use of Customer Proprietary Network Information and Other Customer Information; CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-149, Clarification Order and Second Further Notice of Proposed Rulemaking, 16 FCC Rcd 16506 (2001) FCC 01-247 (Rel. Sept. 7, 2001)

CPNI Third Report and Order

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, CC Docket No. 96-149, 2000 Biennial Regulatory Review -- Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 00-257, Third Report and Order and Third Further Notice of Proposed Rulemaking, 17 FCC Rcd 14860 (2002), FCC 02-214

Pretexting Order

Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, IP-Enabled Services, CC Docket No. 96-115, WC Docket No. 04-36 (Pretexting Order, Report and Order and FNPRM) (Rel. April 2, 2007)

APPENDIX 3

GLOSSARY OF CPNI TERMS USED IN THIS MANUAL

APPENDIX 3

GLOSSARY OF CPNI TERMS USED IN THIS MANUAL

Account Information

Account information includes such things as account number or any component thereof, the telephone number associated with the account, or amount of last bill. (See Footnote 56 in Pretexting Order).

Address of Record

In the context of its new CPNI rules, the FCC reference to an "address of record," whether postal or electronic, is an address that the carrier has associated with the customer's account for at least 30 days. (See Footnote 46 in Pretexting Order).

Affiliate

The Communications Act defines "affiliate" as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. In this context, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent. (47 U.S.C. § 153(1)). This definition is incorporated into the FCC's CPNI rules at 47 C.F.R. § 64.2003(a).

Aggregate Customer Information

The term "aggregate customer information" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed. (47 U.S.C. § 222(f)(2)).

Billing Name and Address (BNA)

The term Billing Name and Address (BNA) means the name and address provided to a local exchange company by each of its customers to which the local exchange company bills for its services. (47 C.F.R. §64.4001(b)). Section 64.1201 of the FCC's rules regulates the provision of BNA to others, specifically BNA with respect to non-subscribed or operator services where a carrier does not have a record of the customer and must obtain BNA from the LEC associated with the ANI in order to bill the call. Section 64.1201(c) limits telecommunications service provider and authorized billing and collection agent use of BNA to: i) billing and collecting for the services provided by the telecommunications service provider; ii) equal access balloting upon initial conversion of an office from non-equal access to equal access; and iii) verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar non-marketing purposes.

Biographical Information

“Readily available” biographical information includes such things as customer social security number or last four digits of the number, customer’s mother’s maiden name, home address, or date of birth. (Footnote 55 in Pretexting Order).

Call Detail Information or Call Records

Any information that pertains to the transmission of specific telephone calls including, for outbound calls, the number called, and the time, location, or duration of any call and for inbound calls, the number from which the call was placed, the time, location, or duration of any call. (See, e.g., CPNI Third Report and Order, 17 FCC Rcd at 14864, para. 7).

Carrier Information

Carrier information is defined within Section 222(b) of the Communications Act as “proprietary information from another carrier for purposes of providing any telecommunications service.”

Commercial Mobile Radio Service (CMRS)

Section 20.3 of the FCC’s rules defines a “commercial mobile radio service” as follows: A mobile service that is: (a)(1) provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) an interconnected service; and (3) available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) the functional equivalent of such a mobile service described in paragraph (a) of this section. (47 C.F.R. § 20.3).

Customer

A customer as it is defined in the context of the FCC’s CPNI rules is a person or entity to which the telecommunications carrier is currently providing service. (47 C.F.R. 64.2003(c)).

Customer Name, Address and Telephone Number

“[Use of] customers’ name, address, and telephone number for marketing purposes would not be subject to CPNI restrictions because such information is not CPNI. A carrier can contact all of its customers or all of its former customers, for marketing purposes, by using a customer list that contains each customer’s name, address, and telephone number, so long as it does not use CPNI to select a subset of customers from that list.” (First CPNI Clarification Order at ¶ 9).

Customer Proprietary Network Information (CPNI)

The Communications Act defines Customer proprietary network information (CPNI) as: (1) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the customer-carrier relationship; and (2) information contained in bills pertaining to telephone exchange service or

telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. (47 U.S.C. § 222(f)(1)). The FCC's Part 64, Subpart U CPNI rules incorporate this definition at 47 C.F.R. § 64.2003(d).

Customer Premises Equipment (CPE)

The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. (47 U.S.C. § 153(14)).

Digital Subscriber Line (DSL)

Technology that allows simultaneous transmission of dialed calls and high speed data over the same loop.

Do Not Call Registry and Individual Entity Do Not Call Lists

The FCC's Telemarketing Rules are codified at Part 64, Subpart, Subpart L (47 C.F.R. §§ 1200 et. seq.). Commercial entities, including telecommunications common carriers shall not make calls to numbers on the national Do-Not-Call Registry unless the entity has a preexisting commercial relationship with the customer.

Information Service

The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service (see 47 U.S.C. § 153 (20)).

Information Services Typically Provided by Telecommunications Carriers

For the purposes of its CPNI rules, the FCC uses the phrase "information services typically provided by telecommunications carriers" which means only those information services (as defined in 47 U.S.C. § 153(20) – see above) that are typically provided by telecommunications carriers, such as Internet access or voice mail services. The phrase does not include retail consumer services provided using Internet websites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services. (47 C.F.R. § 64.2003(f)).

Inside Wiring

Customer-owned or controlled wire on the subscriber's side of the demarcation point. (47 CFR § 68.3).

Interconnected VoIP Provider

The FCC has defined an “interconnected VoIP provider” as a provider of interconnected VoIP service. This service is defined as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that original on the public-switched telephone network and to terminate calls to the public-switched telephone network. (47 C.F.R. § 9.3). In its new CPNI rules, the FCC stated that a service offering is “interconnected VoIP” if it offers the capability for users to receive calls from and terminate calls to the PSTN regardless of whether access to the PSTN is directly through the interconnected VoIP provider or through arrangements with a third party. (See Footnote 180 in Pretexting Order).

Law Enforcement

In the context of CPNI and notifying law enforcement of a breach of its customers’ CPNI, the term “law enforcement” refers to the United States Secret Service (USSS) and the Federal Bureau of Investigation (FBI). The FCC will maintain a link to report CPNI breaches to law enforcement at www.fcc.gov/eb/cpni. (See para. 29 and footnote 95 in Pretexting Order).

Local Exchange Carrier

The term “local exchange carrier” means any person that is engaged in the provision of telephone exchange service or exchange access. (47 U.S.C. § 153(26)).

Long Distance or Interexchange Carrier

The term long distance carrier or “interexchange carrier” means a telephone company that provides telephone toll service. An interexchange carrier does not include commercial mobile radio service providers as defined by federal law. (47 C.F.R. §64.4001(d)).

Opt-In Approval

The term “opt-in approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer’s CPNI. This approval method requires that the carrier obtain from the customer affirmative, express consent allowing the requested CPNI usage, disclosure, or access after the customer is provided appropriate notification of the carrier’s request consistent with the requirements set forth in the FCC’s CPNI rules. (47 C.F.R. § 64.2003(h)).

Opt-out Approval

The term “opt-out approval” refers to a method for obtaining customer consent to use, disclose, or permit access to the customer’s CPNI. Under this approval method, a customer is deemed to have consented to the use, disclosure, or access to the customer’s CPNI if the customer has failed to object thereto within the waiting period described in Section 64.2009(d)(1) of the FCC’s CPNI rules,

after the customer is provided appropriate notification of the carrier's request for consent consistent with the FCC's CPNI rules. (47 C.F.R. § 64.2003(i)).

Preferred Interexchange Carrier (PIC)

The term preferred interexchange carrier means the carrier to which a customer chooses to be presubscribed for purposes of receiving intraLATA and/or interLATA and/or international toll services. (47 C.F.R. §64.4001(f)). This term was originally "primary interexchange carrier;" however, when the FCC revised its slamming rules, the revised rules replaced the term "primary interexchange carrier" with "preferred interexchange carrier."

Pretexting

The practice of pretending to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records. This practice is a criminal offense subject to fines and imprisonment. Telephone Records and Privacy Protection Act of 2006, Pub. L. No. 109-476, 120 Stat. 3568 (2007) (codified at 18 U.S.C. § 1039). (See Footnote 1 in Pretexting Order).

Streamlined Consent for One-Time Use of CPNI

Under a policy adopted in the CPNI Third Report and Order, the FCC allows carriers to utilize a streamlined approach in providing notice for limited, one-time use during an inbound calls from customers or outbound calls to customers. (See Paragraph 98 of the Third CPNI Report and Order). If approval is obtained for the use of CPNI during a call under this streamlined approach, the approval lasts only for the duration of the call.

Subscriber List Information

Subscriber List Information is not CPNI. Subscriber list information is any information (1) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (2) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format." (47 U.S.C. § 222(f)(3)). Section 222(e) of the Communications Act requires local exchange carriers to provide subscriber list information on a timely and unbundled basis, under non-discriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

Telecommunications Carrier or Carrier

The terms "telecommunications carrier" and "carrier" in the context of the FCC's CPNI rules refer to telecommunications carriers and providers of interconnected VoIP service. (See Footnote 3 in Pretexting Order). The FCC defines telecommunications carriers as those that provide "telecommunications service" which is defined below. These include incumbent and competitive local

exchange companies, long distance companies and Commercial Mobile Radio Service (CMRS) companies. Providers of interconnected VoIP services are defined above.

Telecommunications Service

The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. (47 U.S.C. § 153(46)). The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (47 U.S.C. § 153(43)).

Telephone Number of Record

In its new CPNI rules, the FCC defined "telephone number of record" as the telephone number associated with the underlying service, rather than some other telephone number supplied as a customer's "contact information." (See Footnote 46 in Pretexting Order).

Total Service Approach

The FCC interpreted Section 222 of the Communications Act to mean that a telecom carrier may use, disclose, or permit access to CPNI for the purpose of providing or marketing service offerings among the categories of telecommunications service offerings to which the customer already subscribes from the same carrier, without customer approval. The three "categories" of telecommunications service are local exchange, long distance and commercial mobile radio service (CMRS or wireless). (See CPNI Order at para. 24).

Valid Photo ID

In the context of its new CPNI rules, the FCC requires that customers that wish to access CPNI at the carrier's retail location must present a valid photo ID and the valid photo ID matches the name on the account. In this context, a valid photo ID includes a government-issued personal identification with a photograph such as a current driver's license, passport, or comparable ID. (See Footnote 80 in Pretexting Order).